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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270

NORMAN C. NORMAN,

Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

RESPONDENT'S BRIEF

FREDERICK H. WOOD,
Counsel for Respondent.

CARL A. DE GERSDORFF,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270

NORMAN C. NORMAN,
Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Respondent.

RESPONDENT'S BRIEF

STATEMENT

Petitioner is the owner of a bond issued by respondent on February 1, 1930 (R. 6) and purchased by petitioner from respondent on or about said date (Complaint, par. Third, R. 3). By this bond the respondent promised to pay to the bearer One Thousand Dollars at maturity, with interest at 4½% payable semi-annually, payment of principal and interest to be made in a particular kind of money, to-wit: gold coin of the United States of or equal to the then existing standard of weight and fineness (Exhibit to Complaint, R. 6).

On February 1, 1934, petitioner demanded payment of the coupon then maturing, having a face value of $22.50, in gold or its "equivalent" in existing legal tender, claimed to be $38.10[1] (Complaint pars. Seventh, Tenth, R. 4), which

[1]This figure is arrived at by increasing the amount stated to be payable in gold coin of the weight and fineness existing on February 1, 1930, in inverse ratio to the reduction of the weight of the gold dollar accomplished by the Presidential Proclamation, dated January 31, 1934, made pursuant to the Gold Reserve Act of 1934, c. 6, 48 Stat. 337, Appendix, p. 40 (Complaint, pars. Fifth, Ninth, Tenth, R. 4).

payment was refused, but tender made of the face amount of said coupon in then existing legal tender (Complaint, par. Eighth, R. 4; Answer, par. Third, R. 10).

Petitioner thereupon sued respondent in the Supreme Court of New York County and demanded judgment, *inter alia*, for the sum of $22.50 in gold coin of the United States, of the standard of weight and fineness existing on February 1, 1930, or for the equivalent thereof in legal tender, claimed to be $38.10 (Complaint, Prayer, pars. 4 and 5, R. 5). The respondent in its answer set up as an affirmative defense various acts of Congress, the executive orders made thereunder, and Public Resolution No. 10 of the Seventy-third Congress, whereby the respondent was prevented and prohibited from paying either principal or interest "otherwise than dollar for dollar" in coin or currency of the United States, legal tender at the time of payment, and was authorized and required so to pay them (R. 9-10). Petitioner moved to strike out the affirmative defense upon the ground that the Resolution, acts, and orders set up in the answer, in so far as applicable, were unconstitutional, and for judgment on the pleadings (R. 2). Upon the argument of this motion, it was stipulated that the defendant should be deemed to have made a cross-motion for judgment on the pleadings (R. 11). The court, without opinion, denied petitioner's motion to strike out the respondent's affirmative defense, and entered judgment in favor of petitioner for $22.50, the face amount of the coupon sued on.[2] Since the petitioner was admittedly entitled to recover that amount, the judgment, while nominally in favor of the petitioner, was in fact in favor of the respondent.

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[2]While no opinion was rendered, the trial court's order for judgment recites that the court is of the opinion that Public Resolution No. 10 "is valid under the Constitution of the United States" (R. 11-12).

The Appellate Division and the Court of Appeals successively affirmed. The Appellate Division wrote no opinion. The opinion of the Court of Appeals (R. 20-22, per Pound, *Ch. J.*; O'Brien, *J.* dissenting without opinion, R. 23) holds that Public Resolution No. 10 is valid and applicable and requires the judgment which was rendered. "The point for decision in this case", said the Court of Appeals, "depends upon the constitutionality of the joint resolution of Congress known as Public Resolution No. 10 * * * as related to the standard gold clause contained in a corporate bond issued by defendant * * *" (R. 20). The opinion holds that the Resolution is within the power of the Congress and that its application in this action does not violate the constitutional rights of the plaintiff.

This Court granted a writ of certiorari, 293 U. S.

THE STATUTE INVOLVED

The petitioner challenges the constitutional validity of the Joint Resolution of the Congress of June 5, 1933.[3] This Resolution, after declaring that

> "* * * the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States

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[3]Public Resolution No. 10, approved by the President June 5, 1933 (48 Stat. 112). A Joint Resolution of Congress, when approved by the President, has all the force and effect of an Act of Congress (6 *Opinions of the Attorney General* 680 (1854), 14 *Diamond Rings* v. *United States*, 183 U. S. 176 (1901), *Levey* v. *Stockslager*, 129 U. S. 470 (1888)). An appendix containing the statutes, proclamations, executive orders and regulations having a bearing is printed as a separate document and filed herewith.

> measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. * * *"

then provides:

> "That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.
>
> * * * * * *
>
> "(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations."

By Section 2 of the Resolution all coins and currencies of the United States as defined in § 1 (b), theretofore or

thereafter issued, are declared to be legal tender for the payment of all debts, public and private.

The full text of the Resolution is set out in the margin.[4]

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[4] "JOINT RESOLUTION

To Assure Uniform Value to the Coins and Currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency to provide emergency relief with respect to

THE LEGISLATIVE HISTORY OF THE RESOLUTION —THE CONDITIONS EXISTING AT THE TIME OF ITS ADOPTION—AND ITS RELATION TO THE SUBSEQUENT BASIC CHANGE IN OUR MONETARY SYSTEM.

1. The conditions existing at the opening of the Seventy-third Congress.

Within the months immediately preceding the opening of the Seventy-third Congress there had been a great and growing increase in bank failures. Many other banks, including many which were solvent, as well as others which were not, were upon the verge of closing. Business was prostrate. Domestic prices were falling with rapidity. Panic psychology existed throughout the land. The national income had shrunk to an amazing extent, with proportionate and disastrous increase in the debt burden of the nation. Our foreign trade was stagnant, due, in no small measure, to the depreciation of foreign currencies in terms of gold, which had resulted in placing our own currency at a premium over foreign currencies and hence in making it more expensive for citizens in foreign countries, using such depreciated currencies, to buy American goods. Confidence

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agricultural indebtedness, to provide for the orderly liquidation or joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

> 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

in the monetary and financial systems of the country had been shaken. Gold in large quantities was going into hiding or in flight to foreign countries.

These are facts of common knowledge of which the Court will take judicial notice (*Atchison, etc. Ry. Co.* v. *United States,* 284 U. S. 248, 260). They are established, moreover, by the statistical publications of Departments of the Government, and by the provisions and recitals of the several statutes, proclamations, executive orders and regulations which deal with the monetary measures of the Federal Government since March 4, 1933.

2. The acts and executive orders enacted or issued prior to the adoption of the Resolution.

On March 6, 1933, the President, pursuant to authority conferred by the War-Time Act of October 6, 1917 (c. 106, § 5, 40 Stat. 415, as amended by the Act of Sept. 24, 1918, c. 176, § 5, 40 Stat. 966; Appendix, p. 1,) closed all the banks. (Presidential Proclamation, March 6, 1933, Appendix, p. 2). By the same Proclamation, and pursuant to the same authority, the President prohibited any banking institution from paying out, exporting, earmarking, or permitting the withdrawal or transfer in any manner or by any device whatsoever of any gold or silver coin or bullion or currency. On the same day the Secretary of the Treasury, with the approval of the President, directed the Treasurer of the United States and the Director of the Mint, during the continuance of the bank holiday, to pay out gold in any form only under license issued by the Secretary of the Treasury (Appendix, pp. 5, 6). Specie payment was thus suspended.

The National Banking Emergency Relief Act of March 9, 1933 (48 Stat. 1, Appendix, p. 7), approved and confirmed the action theretofore taken by the President and the Secretary of the Treasury as above stated (§ 1), empowered the President to regulate or prohibit transactions in foreign exchange, transfers of credit by banking institutions, and the exporting, hoarding, melting or earmarking of gold or silver coin or bullion or currency (§ 2), and empowered the Secretary of the Treasury, within his discretion, to require delivery to the United States of all gold coin, gold bullion and gold certificates by whomsoever owned, upon payment of "an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States" (§ 3). Under authority of this Act, and on the date of its enactment, a further Presidential Proclamation continued in force, until further Proclamation, the restrictions imposed by the Proclamation of March 6, 1933 and by regulations and orders promulgated thereunder. (Presidential Proclamation of March 9, 1933. Appendix, p. 10). The suspension of specie payment effected by the Proclamation of March 6, 1933 was thus continued in effect, and has not yet been removed.

By Executive Order of March 10, 1933 (Appendix, p. 12) the President authorized the conditional reopening of banks, but forbade the exportation of gold, gold coin or gold certificates,[5] and likewise forbade any banking institution, which might be reopened under the authority conferred upon the Secretary of the Treasury by the same Executive Order, to pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary.

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[5]By subsequent Order of April 20 further and more detailed regulations were promulgated relating to foreign exchange transactions and the exportation of gold. (Appendix, p. 18.)

By the Executive Order of April 5, 1933, (Appendix, p. 14) all persons were required to deliver, with limited exceptions not here material, all gold coin and gold certificates in excess of $100 per person, to the Federal Reserve system, unless licensed to hold gold coin for proper transactions, not involving hoarding.[6]

Between the opening of Congress on March 4, 1933 and its adjournment on June 16, 1933, numerous bills were introduced into both houses of Congress for inflation of the currency, either through the free coinage of silver or the issue of paper money. None of these bills was enacted into law. But on May 12, 1933, by the Thomas Amendment to the Agricultural Adjustment Act (c. 25, § 43, 48 Stat. 51-53; Appendix, p. 22) the President was empowered (a) to cause additional paper money to be issued in any amount not exceeding Three Billion Dollars; (b) to provide for the free and unlimited coinage of silver at such ratio in relation to gold as might be determined by him; and (c) to reduce the gold content of the gold dollar to any extent not less than 50% of its existing content.[7]

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[6]On April 28, 1933 (Appendix, p. 21) the Secretary of the Treasury issued instructions to all Governors of Federal Reserve Banks that the Secretary of the Treasury would grant no license for the acquisition of gold coin for the purpose of meeting maturing obligations for payment in gold coin, with limited exceptions not here material.

[7]The statute required that action by the President thereunder be predicated upon his finding: "that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments." This statute also provided that all coins and currency theretofore or thereafter coined or issued by or under the authority of the United States should be legal tender for all debts, public or private.

3. The situation as it existed at the time of the adoption of the Resolution.

The Resolution was adopted June 5, 1933. At that time the President had not exercised any of the powers conferred by the Thomas Amendment. It was uncertain whether any of such powers would ever be exercised. There were many who hoped and believed that their exercise would be found to be unnecessary, and that in the course of time existing restrictions upon the exportation and use of gold coin could be removed, and the monetary system and national currency restored to normal.

Congress was about to recess. Gold coin had not been retired wholly from circulation, although by reason of the restrictions upon its use its circulation was limited. Its exportation had been prohibited and measures had been taken to prevent domestic hoarding in quantities. These restrictions rested on Executive Orders. Congress itself had not at the time deemed it wise by direct action either to retire gold coin from circulation or to prohibit its exportation or hoarding by law. The purpose of the powers conferred upon the President, and the executive action taken thereunder, was to prevent gold coin from going to a premium and thus to preserve the integrity of the national currency and insure stability. Within a single month prior to the opening of the Seventy-third Congress in March, 1933, $624,000,000 in gold had been withdrawn from the Federal Reserve banks and the Treasury, of which $406,000,000 had been exported or ear-marked for foreign account, and $165,000,000 domestically hoarded (Federal Reserve Bulletin, April 1933, p. 215). History taught that the hoarding and flight of gold, unless checked, inevitably resulted in sending gold coin to a premium, thus destroying the

parity between the several forms of currency in existence or use, without which the integrity of no monetary system may be maintained. The flight and hoarding of gold had been arrested by the measures taken. Danger of their recurrence still remained and was an obvious obstacle to the restoration of a normal monetary condition by the removal or relaxation of the restrictions imposed. Moreover, the threat of inflation contained in the Thomas Amendment was in itself an incentive to the hoarding and exportation of gold, if existing restrictions were removed, and thus threatened the continued maintenance of the parity between the several forms of currency then in existence. The time was appropriate for the adoption of additional measures to maintain such parity.

Public Resolution No. 10 was such a measure, appropriate for such purpose, whether the powers conferred by the Thomas Amendment were ever exercised or not. There were then outstanding not less than $75,000,000,000 of private obligations containing a gold clause, and not less than $25,000,000 of public obligations.[7a] At an assumed average interest rate of 5%, the annual interest charges on the former aggregate $3,750,000,000, and at an assumed average interest rate of 4% on the latter, $1,000,000,000, or a total of $4,750,000,000. This amount alone exceeded the existing supply of gold in the United States. These figures do not include the principal amount of such obligations presently to mature. Under the gold clause the

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[7a]So estimated by Congressman Steagall, Chairman of the Committee on Banking and Currency, which reported the Bill to the House. 77 Cong. Rec., Part V, p. 4531. Congressman Luce, who presented the minority views of the Committee, stated that the amount was $100,000,000,000, exclusive of Government securities. *Id.* p. 4534. Other estimates within the same range were made by other members of Congress. *Id.* pp. 4520, 4523, 4526, 4536, 4545, 4905.

holders of these bonds were entitled to demand payment in gold coin of the then existing weight and fineness. The potential concerted demand for such enormous amounts of gold coin by reason of these clauses, if made, was not only such as to unsettle the whole monetary system (irrespective of any change therein), but to accelerate and intensify the tendency, already present, to hoard gold, and hence to send gold coin to a premium, destroying the parity between the several forms of currency in existence.

In adopting the Resolution Congress also had in mind the situation as it would be affected by the possible exercise by the President of the powers conferred by the Thomas Amendment. In anticipation of such action as the President might take, it was appropriate for Congress to adopt the resolution, both as a parity measure and for the purpose of protecting the integrity of such new monetary system as might result from executive action, as well as to safeguard the continued parity of the then existing currency in the event that the powers under the Thomas Amendment should not be exercised.

4. The acts and executive orders enacted or issued subsequent to the adoption of Public Resolution No. 10.

By order of the Secretary of the Treasury, approved by the President on December 28, 1933 (Appendix, p. 34), all gold coin, gold certificates and gold bullion were required to be paid over or delivered to the United States upon payment therefor in other forms of coin or currency.*

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*By Order of the Secretary of the Treasury, approved by the President on January 15, 1934, midnight of January 17, 1934 was fixed as the expiration of the period during which such delivery should be made.

The Gold Reserve Act of January 30, 1934 (48 Stat.; Appendix, p. 40), ratified, approved and confirmed all previous executive action taken by the President and the Secretary of the Treasury under the Act of March 9, 1933 (§ 13); vested title in the United States to all gold or gold coin held by the Federal Reserve Boards, Banks or Agents (§ 2); continued the power of the President to reduce the gold content of the gold dollar, requiring, however, that if such power were exercised the content should be fixed at between 50% and 60% of the then existing content (§ 12); and provided that no gold should thereafter be coined; that no gold should thereafter be paid out or delivered by the United States; that all gold coin of the United States should be withdrawn from circulation (§ 5); and that no currency of the United States should be redeemed in gold, with exceptions not here material (§ 6).

By Proclamation of the President of January 31, 1934 (Appendix, p. 56), the power so conferred was exercised by reduction in the gold content of the gold dollar to 15 5/21sts grains 9/10ths fine, or to approximately 60% of its prior content. This proclamation was predicated upon the making of findings of fact in conformity with the Act of May 12, 1933, whereby the standards of Executive action, if taken, were prescribed.

The monetary legislation of the Seventy-third Congress thus took final and complete form with the enactment of the Gold Reserve Act.

5. The effect of the monetary legislation, considered as a whole, and the relation of the Resolution thereto.

The effect of the monetary legislation, considered as a whole, was:

(1) to retire gold coin and gold certificates from circulation and prohibit their use as money in all domestic transactions,

(2) to establish a national currency to consist of coin (other than gold coin), silver certificates, Federal Reserve, Federal Reserve Bank, National Bank, United States and Treasury notes, based on a gold-bullion standard, under which the dollar, although irredeemable in gold for domestic purposes, should have an assigned bullion weight, for purposes of international settlement, of approximately 60% of the bullion weight of the gold coin retired,

(3) to make said national currency legal tender for the payment of all debts, public and private, and of equal value in the discharge of all obligations payable in money, whether for the payment of debts, the purchase of goods or the performance of services, irrespective of the date when such obligations were incurred, or of the contemplation of the parties at the time as to the kind of money in which the same were to be discharged, and

(4) to prevent the circumvention or obstruction of the accomplishment of such purposes through the operation of any contract theretofore or thereafter made purporting to give to the obligee the right to require the discharge of an obligation, payable in money, in any manner except dollar for dollar in such legal tender.

By this legislation the Congress made a basic change in the monetary system of the country. The wisdom and expediency of making such change was for the Congress.

THE QUESTION PRESENTED

The question presented in this case, formally stated, is whether the Court of Appeals of the State of New York was right or wrong in ruling that the Resolution is a valid exercise of the constitutional power of the United States, and that, as here applied, it does not do violence to any right, title, privilege or immunity of the plaintiff safeguarded to him by the Constitution of the United States.

The real question, we believe, is whether the Congress has any effective power to give to this Nation a uniform and stable monetary system and a currency suited to its needs, and to regulate and maintain the values of the monies of the United States; or whether private persons may usurp or obstruct these functions by contracts containing standard provisions drafted with "prophetic discernment" to forestall the exercise of the National power, and, on the plea of arbitrary interference with private rights of property and of contract, render ineffective and futile the exercise by Congress of the powers over the monetary system and the currency entrusted to it by the Constitution.

SUMMARY OF ARGUMENT

I. The bond involved in this action is "an obligation payable in money of the United States" within the meaning of the Resolution.

II. The gold clause in the bond in suit is a "gold coin", not a "gold value" clause, but is equally within the Resolution, whether interpreted as one or the other.

III. Sources of the monetary power of the Congress.

1. The Congress has an authority with respect to the national monetary system and the currency not

confined by the limitations of any one specific grant in the Constitution. The exertion of this authority may be supported by the "resulting" or "composite" powers arising through the combination or aggregation of any or all of the specific grants of power.

IV. The character and scope of the powers of the Congress over the monetary system and the currency.

1. The sovereign character of the national government as established by the Constitution, must be given weight in determining the scope of the powers granted to it over the monetary system and the currency.

2. Congress is empowered to provide the People with a national monetary system and a national currency suitable to their needs, and to secure to them the full and unimpaired benefits thereof through the adoption of any measures appropriate either to the accomplishment of such purpose or for the removal of obstructions thereto.

3. In the exercise of its power over the monetary system and the currency, the Congress is empowered to declare of what the currency shall consist, to give every unit and description thereof the character and qualities of money having a defined legal value, irrespective of the intrinsic value of the substances out of which made, to regulate the value of such money and to make every unit and description thereof legal tender at its face value for the discharge of all money obligations, public or private, whether previously existing or subsequently incurred.

4. The power of the Congress over the monetary system and the currency and to determine of what money shall consist includes the power to regulate its volume, to enhance or debase its value, to "decry" or withdraw from circulation existing forms of money, and to provide new forms of money and require their acceptance as a full substitute at equal tender value with those forms of money for which it is substituted.

5. The power to regulate the value of money authorizes the Congress to control the use of money as a standard of value, as well as to regulate its value as a medium of exchange.

6. The power to determine of what money shall consist and to regulate the value thereof, includes the power to determine and regulate the value of the several units of the currency in terms of each other and to prohibit the attempted use of one kind of money as a commodity for the purpose of realizing in another kind of money a value greater than the stated value of the first.

7. As in respect of all other powers, the power conferred includes the power to preserve and protect its exercise for the accomplishment of the objects embraced therein and to remove any and all obstructions thereto by the adoption of any appropriate means, notwithstanding any resulting interference with private rights of property or contract.

   (A) The comprehensiveness of this power to preserve that which Congress has created and

to prevent obstruction of or interference with its unimpaired usefulness for the accomplishment of the purposes for which created is evidenced by the previous decisions of this Court arising under the power of Congress over the monetary system and currency.

(B) The comprehensiveness of this power is also evidenced by the decisions of this Court in respect of the related power of the Federal Government to create national banks.

(C) The extent of this power is forcefully illustrated by the decisions arising under the Commerce Clause, one of the clauses upon which the power of Congress over the monetary system and currency is based.

V. The Resolution was both (1) an affirmative exercise of the powers of the Congress over the monetary system and the currency and to regulate the value of money, and (2) a measure both appropriate and necessary to preserve the same and to remove an obvious obstacle to their exercise.

1. Private individuals may not by prophetic discernment, through contracts previously entered into, any more than by contracts subsequently made, limit or obstruct the exercise by the Congress of its powers.

2. By prophetic discernment, private individuals have attempted to withdraw billions of dollars of obli-

gations payable in lawful money of the United States from the exercise by the Congress of its power over the monetary system and the currency and to regulate the value of money.

3. If by prophetic discernment individuals may limit the monetary powers of Congress through the making of pre-existing contracts, they are equally possessed of the power to render nugatory the prohibition which the Resolution contains against the insertion of similar clauses in subsequent contracts and hence to withdraw entirely from the Congressional field all legal tender powers of Congress and its power to regulate the value of money.

4. Gold clause obligations, at all times a latent threat to the stability of the monetary system and currency, had, at the time of the adoption of the Resolution, become an obvious obstacle to the restoration and maintenance of a stable monetary system and currency, which it was within the power of the Congress to remove both to meet the then existing situation and to prevent its recurrence.

5. The Resolution was (1) an affirmative exercise of the power of the Congress to provide the Nation with a monetary system and currency believed by it to be suitable to the needs of the people and their commerce, and (2) of the power to remove an obvious obstruction or obstacle to the exercise of this power.

6. Gold clause obligations constituted an obstruction to the adjustment of the value of the dollar in the interest of our foreign commerce.

7. In the last analysis, those who challenge the validity of the Resolution would deny to the Congress the choice of means by which to effect such change in the monetary system as was believed by it to be required by the needs of the people and their commerce, both foreign and domestic.

8. As related to the subsequent devaluation of the dollar, the Resolution was a valid exercise of all of the powers of the Congress over the monetary system and the currency, hereinbefore reviewed.

VI. The Resolution as here applied does not violate any right, title, privilege or immunity safeguarded to the petitioner by the Federal Constitution.

1. The contract impairment clause, the equal protection clause, and the just compensation clause, have no bearing whatever on the case at bar.

2. The Resolution, being a means appropriate to the exercise of a power conferred upon the Congress, and uniform in its application, is not an arbitrary, capricious or discriminatory interference with private rights of contract or property, and its application here, therefore, does not violate the due process clause of the Fifth Amendment.

ARGUMENT

I

THE BOND INVOLVED IN THIS ACTION IS "AN OBLIGATION PAYABLE IN MONEY OF THE UNITED STATES" WITHIN THE MEANING OF THE RESOLUTION.

The Resolution extends to any "obligation * * * payable in money of the United States * * *." The pertinent provisions of the bond in respect of the payment of principal and interest (R. 6) are as follows:

"United States of America

$1000		$1000

THE BALTIMORE AND OHIO RAILROAD COMPANY

No. 14569	THIRTY-YEAR 4½% CONVERTIBLE GOLD BOND DUE February 1, 1960	No. 14569

"THE BALTIMORE AND OHIO RAILROAD COMPANY, a corporation of the State of Maryland (hereinafter called the Company), for value received, hereby promises to pay to the bearer, or, if this bond be registered, to the registered owner hereof, on February 1, 1960, the sum of ONE THOUSAND DOLLARS, and to pay interest on said sum from February 1, 1930, until the same shall be paid, at the rate of four and one-half per cent. (4½%) per annum, semi-annually on February 1 and August 1 in each

> year, upon presentation and surrender of the interest coupons hereto annexed as they shall severally mature. Payment of the principal of and interest on this bond will be made at the office or agency of the Company in the Borough of Manhattan, The City of New York, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930."

The obligation is clearly one for the payment of money and not for the delivery of a specified number of grains or ounces of gold. In the first sentence the obligor agrees to pay the sum of "ONE THOUSAND DOLLARS" with interest thereon. This is an obligation payable in money of the United States. It is no less so because, in the second sentence, it is provided that payment will be made in a particular kind of money. *Trebilcock* v. *Wilson*, 12 Wall. 687 (1871); *Thompson* v. *Butler*, 95 U. S. 694 (1877).

If the bond were a "commodity contract", the defendant could discharge its obligation by tender of bullion. But the terms of this bond specify payment in money only,—money capable of being banked and used by the obligee as a medium of exchange. The parties so provided and so intended. A tender of bullion, or of any other commodity, no matter how great its value, would not discharge the obligation without a waiver of rights by the obligee.

Moreover the contract was at its very inception a "money" contract, the subject matter of which was lawful money of the United States loaned to the respondent upon the issue of the bond and to be repaid in money at its maturity.

II

THE GOLD CLAUSE IN THE BOND IN SUIT IS A "GOLD COIN", NOT A "GOLD VALUE" CLAUSE,[1] BUT IS EQUALLY WITHIN THE RESOLUTION WHETHER INTERPRETED AS THE ONE OR THE OTHER.

The bond is likewise within the Resolution whether interpreted as a contract for payment in a particular kind of money, *i.e.*, one defining the mode of payment, or as one prescribing the measure of payment. The Resolution in terms applies not only to obligations requiring payment in a particular kind of money, but also to obligations requiring payment "in an amount of money of the United States measured thereby".

In either event, the Resolution is clearly constitutional, as will be hereinafter demonstrated.

Since, however, the petitioner predicates his entire constitutional argument on one interpretation of the clause only, it is pertinent briefly to consider its proper interpretation. Petitioner contends that it is a "gold value" clause, which implies a payment in the "equivalent" of gold in the event performance by payment in gold coin is impossible, *i.e.*, that the instrument should be interpreted as if written in substance as follows:

> "The Baltimore and Ohio Railroad Company promises to pay to the bearer on February 1, 1960, the sum of One Thousand Dollars in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930, if that be possible, but if impossible, then to pay the number of dollars of any other form of

[1]By a "gold coin" clause is meant one prescribing a mode of payment,—payment in a particular kind of money, without more. A "gold value" clause purports to set up a measure of payment.

> money then current which will buy the number of grains of gold contained in $1000 of gold coin of said weight and fineness, and in like manner to pay interest on said sum annually from the date hereof at 4½% per annum."

An instrument so framed or interpreted is not one for the payment of a sum certain in money, but one for the payment of an indeterminate sum ascertainable only at date of payment, and is not negotiable. (Negotiable Instruments Law of New York, Art. 3, Section 20(2); Laws of Maryland, 1898, Ch. 119, Section 20(2); Uniform Negotiable Instruments Law, Article I, § 1 (2)). The parties clearly intended that the obligee could require payment of the number of dollars stipulated in gold coin of the specified weight and fineness. They also intended, however, that the instrument should be negotiable.[2] Like substantially all other bonds issued in this country containing a gold clause, these were bearer bonds, intended to pass from hand to hand and to be negotiable. That this particular series of bonds was so intended is further evidenced by the bond itself, which provides that registration of the bond "shall not affect the negotiability of the coupons appertaining" thereto "which shall continue to be transferable by delivery" (R. 8). No interpretation should be placed upon the bond which would render it non-negotiable, contrary to the intent of the parties.

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[2]Section 6(5) of Article I of the Uniform Negotiable Instruments Law provides that the validity and negotiable character of an instrument are not affected by the fact that it designates a particular kind of current money in which payment is to be made. Hence, if the gold clause is construed to require payment of a specified number of dollars in gold coin, as we maintain, the bonds would be negotiable (*Chrysler* v. *Renois*, 43 N. Y. 209). In this connection it is interesting to note that the New York Stock Exchange has refused to list bonds containing the words "or the equivalent thereof" after the standard gold clause. (See Post and Willard, The Power of Congress to Nullify Gold Clauses, 46 Harv. L. Rev. 1225, Note 1.)

Moreover the instrument is unambiguous on its face. In the first sentence the obligor agrees to pay a specified sum, $1,000, with interest thereon.[3] The second sentence of the obligation requires the obligor to pay in a particular kind of money, *i.e.*, "in gold coin of the United States of or equal to the weight and fineness existing on February 1, 1930". The contract thus on its face is a gold coin contract. That it is such and not a "gold value" contract is further supported by the interpretation hitherto given to similar contracts by this Court, which has held that they are dischargeable only in the coin specified and not in that amount of other money which at the time of payment will buy such coin. *Bronson* v. *Rhodes*, 7 Wall. 229; *Trebilcock* v. *Wilson*, 12 Wall. 687; *The Emily Souder*, 17 Wall. 666; *Butler* v. *Horwitz*, 7 Wall. 258; *Dewing* v. *Sears*, 11 Wall. 379.[4]

Concededly it was the intention of the parties to guard against inflation. But not only the language of the contract but the history of gold clauses in this country (and gold clauses are peculiarly an American institution) make

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[3]Such an obligation is dischargeable in any form of legal tender current at the time of payment, at the option of the obligor. *Legal Tender Cases*, 12 Wall. 457; *Juilliard* v. *Greenman*, 110 U. S. 421; *Maryland* v. *Baltimore and Ohio Railroad Co.*, 22 Wall. 105; *Woodruff* v. *Mississippi*, 162 U. S. 291.

[4]In each of the three cases first cited, this Court held (there being no such statute as Public Resolution No. 10 in effect) that a judgment rendered on a contract payable, in terms, in coin or in specie, could not, over the objection of the obligee, be rendered in anything but coin or specie. The two cases last cited are especially significant. The *Dewing* case involved a contract whereby the obligor promised to pay a certain number of ounces or grains of gold in coined money; the *Horwitz* case, an obligation to pay in foreign coin "and other gold and silver at their present established weight * * * ". In each case the obligee was willing to accept a judgment in paper currency, but the *obligor objected* to the rendition of such a judgment. In each case this Court held it reversible error to enter a judgment in paper currency.

it plain that it was determined to guard against inflation in a particular way which had always been successful in the past—by stipulating for payment in gold coin.[5] Apparently the parties never adverted to the possibility that the obligor could not be compelled in a suit brought upon the instrument to discharge the obligation in gold coin of the specified weight and fineness.[6]

Petitioner has cited no decided case which, in our judgment, supports any interpretation of the gold clause in the bond sued on contrary to that which we attribute to it. In *The Vaughan & Telegraph*, 14 Wall. 258, cited at page 14 of petitioner's brief, no gold clause was involved. In *Gregory* v. *Morris*, 96 U. S. 619, cited at the same page of petitioner's brief, although a gold clause was incidentally involved, the suit was not brought upon it or to enforce it. The case involved an action by an individual from whom cattle securing an instrument containing a gold clause had been wrongfully replevied, and presented the question of the mode of calculating "damages" for the wrongful replevin under Wyoming law. As stated by this Court (96 U. S., at 624):

> "* * * the suit is not upon the contract for the recovery of the amount agreed to be paid, but, in effect, for damages on account of the wrongful detention of property mortgaged to secure the debt".

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[5]Clearly the employment of the words "gold coin * * * of or equal to the standard of weight and fineness existing on February 1, 1930", does not indicate that the parties intended that the obligor would be able to demand a larger number of dollars in paper or silver currency. The words "equal to" are really synonymous with "of". Reading the language as the parties wrote it, it would seem that the parties were making allowance for an increase in the alloy of gold coin while retaining the same gold content. (See Nebolsine, Gold Clauses in Private Contracts, 42 Yale Law Journal, 1051, 1077-1079.)

[6]Gold coin had never been withdrawn from circulation in this country by governmental act until the recent monetary legislation.

The recent decision of the House of Lords in *Feist* v. *Societe Intercommunale Belge d'Electricite*, cited at page 20 of petitioner's brief is likewise not in point. The *Feist* case involved the construction[7] of bonds issued by a foreign company in 1928 and sold in London, payable, in terms, in the sum of £100 "in Sterling, in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1, 1928". The House of Lords, in reversing the unanimous judgment of the Court of Appeal, as well as that of the Chancery Divison, virtually conceded that there was no real ambiguity on the face of the contract[8] but found a latent ambiguity in the circumstances existing at the date of its execution, and, on the basis thereof, held that, gold coin having been withdrawn from circulation, the bondholders were entitled to recover the number of pounds in paper currency which on the date of payment of principal and interest would buy the number of grains of gold contained in the gold coin specified. The circumstances existing at the date of execution of the gold clause contract before the House of Lords, by virtue of which that court found a latent ambiguity, clearly distinguish the case from this case. At the date when the Belgian bonds were issued Great Britain, although having resumed the Gold Standard three years before, was no longer redeeming currency in gold, and gold coin was substantially no longer in circulation. For this reason the

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[7]No question of governmental power was involved. There was no legislation similar to Public Resolution No. 10 in force in the United Kingdom, since gold clauses are not a common phenomenon in the United Kingdom, their use there being confined almost exclusively to international obligations. (See *Nussbaum La Clause-Or dans les Contracts Internationaux, in Recueil des Cours, 1933*, pp. 567, 570.)

[8]Lord Russell said: "I am conscious, my Lords, that this construction strains the words of the document * * *."

court inferred that the gold clause was inserted "in contemplation of the contingency of this country going (as it did in 1931) off the Gold Standard at some future date", and that "neither party to the bond can have contemplated payment under the bond being actually made in gold coins". Thus the primary[9] circumstances on which the court relied to find a latent ambiguity in the *Feist* case are not present in this case and the decision therein cannot be deemed to be apposite herein.

The decisions of the Permanent Court of International Justice at The Hague in the case of the *Brazilian Loans* (P. C. I. J., Series A, No. 20), referred to at page 20 of petitioner's brief, as well as the case of the *Serbian Loans* (*Ibid* 21), not referred to therein, are even more clearly distinguishable than the *Feist* case, *supra*. The Serbian and Brazilian bonds were payable in various countries in "gold francs" ("francs d'or"), but the franc of no particular country was specified. It was therefore perfectly obvious that the contracts in question were "gold value" contracts.

For the reasons assigned in the foregoing discussion, it is our view that the bond sued on, like all standand American gold clause obligations, is a "gold coin" contract. We repeat that the Resolution is constitutional, however, whether the gold clause in the bond in suit prescribes a mode or a measure of payment.

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[9]The Court also noted that there were no English gold coins of the denominations required to pay portions of the interest on the bonds sued on. This argument was obviously a make-weight. It cannot be made herein because there were gold coins in circulation at the date of the bond sued on in denominations which exactly fitted the interest payments. But, in any event, if there were not, that would be *de minimus*.

III

SOURCES OF THE MONETARY POWERS OF THE CONGRESS.

1. The Congress has an authority with respect to the national monetary system and the currency[1] not confined by the limitations of any one specific grant in the Constitution. The exertion of this authority may be supported by the "resulting" or "composite" powers arising through the combination or aggregation of any or all of the specific grants of power.

The Constitution specifically confers upon the Congress the broad power "* * * To Coin Money, regulate the Value thereof, and of foreign Coin * * *",[2] but this Court has not been content to confine the authority of the Congress over the national monetary system and the currency to the limitations of even this broad clause. In the great decisions which established the authority of the Congress to issue irredeemable paper money and make it legal tender for the payment of money contracts, past and future,[3] this Court expressly declined to rest the Congressional power with respect to the monetary system and the currency upon the coinage and valuation clause alone, and in terms ruled that the power to enact the legislation there challenged might be sought and found in a combination of the powers conferred by § 8 of Art. I, including the "necessary and

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[1]Except where the context otherwise indicates, the term "currency" is herein used in the broad sense, as including any form of the circulating media, whether coin or paper.

[2]Art. I, § 8, cl. 5.

[3]*The Legal Tender Cases*, 12 Wall. 457.
Julliard v. *Greenman*, 110 U. S. 421.

proper" clause,[4] as a "resulting power" arising from the aggregate of any or all.

The reasons which impelled the Court to this broad view of the source of the monetary powers of the Congress are distinctly set forth in the opinions in *The Legal Tender Cases* and in *Juilliard* v. *Greenman*.[5] The Court adverted to the inconclusive character of the debates upon that subject in the Constitutional Convention;[6] to the significant silences of the Constitution and to the prohibitions it places upon the exercise of monetary powers by the States, as well as to the aggregate force of the several grants to the Congress considered together. Most significant of all, however, was its reference to and reliance upon a broad consideration of the great objects sought to be attained by the Constitution, the sovereign character of the Government thereby created, and the historical scope of the normal and well-understood powers of sovereign governments in the regulation of national monetary systems.

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[4]Art. I, § 8, cl. 18: "The Congress shall have Power * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

[5]Note 3 *ante*.

[6]*Juilliard* v. *Greenman*, 110 U. S. 421, 443. This conclusion is confirmed by the researches of scholars. Breckenridge, speaking of the power to declare paper money a legal tender, concludes, after a review of the debates and other historical sources, that

> "Silence as to that was maintained; and all that can be said as to the interpretation of that silence is that, although there was a strong and well-nigh universal dread of paper issues, there was a stronger dread of too narrowly limiting the powers of the new legislature; and that there was neither a very definite nor a unanimous opinion * * * as to the extent of the power granted." Legal Tender, p. 85.

Professor Thayer reaches like conclusions. Legal Tender, 1 Harvard Law Rev. 73, 76-80.

Referring specifically to the source of the powers in question, the Court in *The Legal Tender Cases* said:

> "And here it is to be observed it is not indispensable to the existence of any power claimed for the Federal government that it can be found specified in the words of the Constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined, or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferred. Such a treatment of the Constitution is recognized by its own provision. * * *" (p. 534)
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> "And it is of importance to observe that Congress has often exercised, without question, powers that are not expressly given nor ancillary to any single enumerated power. Powers thus exercised are what are called by Judge Story in his Commentaries on the Constitution, resulting powers, arising from the aggregate powers of the government. * * *" (p. 535)[6a]
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> "Indeed the whole history of the government and of congressional legislation has exhibited the use of a very wide discretion, even in times of peace and in the absence of any trying emergency, in the selection of the necessary and proper means to carry into effect the *great objects* for which the government was framed, and this discretion has generally been unquestioned, or, if questioned, sanctioned by this court. This is true not only when an attempt

[6a] *2 Story's Comm. on the Constitution*, § 1256 (5th Ed.); *Willoughby on the Constitution*, § 54.

> has been made to execute a single power specifically given, but equally true when the means adopted have been appropriate to the execution, not of a single authority, but of all the powers created by the Constitution. * * *" (pp. 536-537)
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> "With these rules of constitutional construction before us, settled at an early period in the history of the government, hitherto universally accepted, and not even now doubted, we have a safe guide to a right decision of the questions before us. Before we can hold the legal tender acts unconstitutional, we must be convinced they were not appropriate means, or means conducive to the execution *of any or all of the powers of Congress, or of the government,* not appropriate in any degree (for we are not judges of the degree of appropriateness), or we must hold that they were prohibited. * * *" (p. 539)

The Court in that case did not attempt to enumerate the powers out of whose combination the power over the monetary system and currency of the United States was derived. It did, however, make it plain that the exercise of that power was one of the *great objects* of government entrusted to Congress, derived from no single clause of the Constitution, but as a resulting power arising from the aggregate of the powers conferred.

In the subsequent legal tender case, *Juilliard* v. *Greenman,* 110 U. S. 421, the Court said:

> "The people of the United States by the Constitution established a national government, with sovereign powers, legislative, executive and judicial. 'The government of the Union,' said Chief Justice Marshall, 'though limited in its powers, is supreme within its sphere of action;' 'and its laws, when

made in pursuance of the Constitution, form the supreme law of the land.' 'Among the enumerated powers of government, we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government.' 4 Wheat. 405, 406, 407.

"*A constitution, establishing* a frame of government, declaring fundamental principles, and creating a national sovereignty, and intended to endure for ages and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the national legislature; but it does not undertake, with the precision and detail of a code of laws, to enumerate the subdivisions of those powers, or to specify all the means by which they may be carried into execution. * * *" (pp. 438-439)

With this as a predicate the Court then said:

"The breadth and comprehensiveness of the words of the Constitution are nowhere more strikingly exhibited than in regard to the powers over the subjects of revenue, finance, and currency, of which there is no other express grant than may be found in these few brief clauses:

" 'The Congress shall have power

" 'To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the

United States; but all duties, imposts and excises shall be uniform throughout the United States;

" 'To borrow money on the credit of the United States;

" 'To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;'

" 'To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.'

"The section which contains the grant of these and other principal legislative powers concludes by declaring that the Congress shall have power

" 'To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.'

"By the settled construction and the only reasonable interpretation of this clause, the words 'necessary and proper' are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it." (pp. 439-440)

This method of constitutional construction—this doctrine of composite or resulting powers, and this insistence upon reading the constitutional grants in the light of the purposes intended to be subserved by the very establishment of the Union and with appreciation of the sovereign character of the government thereby created—did not originate with the money cases and has not been limited to them.

Long before the *Legal Tender Cases,* the doctrine had been expounded and applied by Chief Justice Marshall in *McCulloch* v. *Maryland* (4 Wheat. 316), where, in sustaining the power of the Congress to establish a national bank (a power closely related to, and involving the exercise of powers over, the monetary system and the currency, especially in its subsequent history[7]), the Chief Justice found the power to create the Bank of the United States in a combination of the taxing power, the power to borrow money, to regulate commerce, to declare war, and to raise and support armies and navies, together with the necessary and proper clause. Said Chief Justice Marshall, in announcing "the unanimous and decided opinion" of the Court in that case:

> "Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation', we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations and no inconsiderable portion of the industry of the nation, are entrusted to its Government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depends, must also be entrusted with ample means for their execution. [4 Wheat. 407, 408]
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> * * *

[7]See *Osborn* v. *Bank,* 9 Wheat 738, 863, 864.
Farmers & Mechanics National Bank v. *Dearing,* 91 U. S. 29, 33.

> "But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the Government to general reasoning. To its enumeration of powers is added that of making 'all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this Constitution, in the Government of the United States, or in any department thereof.'" [4 Wheat. 411, 412]

This broad method of constitutional construction has abundant illustration in the decisions of this Court in ascertaining the existence or extent of the powers asserted by the Congress in varied fields, and has resulted in a wide and liberal interpretation of the constitutional grants of power to the Congress, especially in those fields deemed to relate to powers normally the attributes of sovereign nations, and those having international aspects.[8]

The enumeration made by the court in *Juilliard* v. *Greenman, supra,* of certain specific powers deemed to be especially apposite to sustain the Legal Tender Acts cannot be taken as restricting to those powers the sources from which the authority of the Congress over the monetary system and the currency may be deemed to be derived. As this Court said in *The Legal Tender Cases, supra:*

> "Before we can hold the legal tender acts unconstitutional, we must be convinced they were not

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[8]See *Fong Yue Ting* v. *United States,* 149 U. S. 698, 711-712.
The Insular Cases, 182 U. S. 244, 288, 300; 195 U. S. 138, 140, 143, 149; 258 U. S. 298, 305.
United States v. *Gettysburg Electric Ry.,* 160 U. S. 668.
Mackenzie v. *Hare,* 239 U. S. 299, 311.
Selective Draft Cases, 245 U. S. 366, 377.
McGrain v. *Daugherty,* 273 U. S. 135, 161.

appropriate means, or means conducive to the execution *of any or all of the powers of Congress, or of the government*, * * *."

Juilliard v. *Greenman* establishes that the powers to tax, to borrow money, to regulate commerce, and to coin money may be combined as sources of the resulting powers of the Congress over the national monetary system and the currency, but it cannot be affirmed, upon the basis of that or any other adjudicated case, that any power conferred by the Constitution upon the Congress or upon any department of the National Government may not likewise form a source for the exercise of national authority in monetary matters.

IV

THE CHARACTER AND SCOPE OF THE POWERS OF THE CONGRESS OVER THE MONETARY SYSTEM AND THE CURRENCY.

1. The sovereign character of the national government as established by the Constitution, must be given weight in determining the scope of the powers granted to it over the monetary system and the currency.

While the United States has no inherent powers of sovereignty,[1] the Constitution specifically grants to it the sovereign character of supremacy within the sphere of its delegated powers, whether expressly enumerated, resulting, or

[1] In the sense that powers cannot be attributed to it merely because they are national in character and scope, even if not expressly granted or fairly to be deduced from any grant of power or combination of them. *Kansas* v. *Colorado*, 206 U. S. 46, 89, *et seq.*

auxiliary.[2] Not only this, but in construing the great clauses of the Constitution for the purpose of determining whether any particular power has been granted, and if so, its character and scope, the Court has frequently been guided by the fact that it was a primary purpose of the Constitution to create a sovereign nation as distinguished from a mere federation of states.[3]

In every case in which exertions by the Congress of power over the monetary system or the units thereof has been challenged in this Court, this rule of construction has been adverted to and applied, with the result that in every such case the power has been found and affirmed and given a range and scope co-extensive with that customarily exercised by sovereigns in that field. The Court has sustained statutes chartering national banks to act as fiscal agents and to issue circulating currency (*McCulloch*

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[2]Constitution, Art. IV, Cl. 2; *McCulloch* v. *Maryland*, 4 Wheat. 316, 404; *Cohens* v. *Virginia*, 6 Wheat. 264, 414.

[3]"The Constitution was intended to frame a government as distinguished from a league or compact, a government supreme in some particulars over States and people." *Legal Tender Cases*, 12 Wall. 457, 545.

The same principle has been repeatedly applied by this Court in sustaining the power of the Congress, when challenged upon the ground that a particular exertion of it was not within the terms of any grant in the Constitution. See *Mackenzie* v. *Hare*, 239 U. S. 299, 311, sustaining the power of Congress to disfranchise an American woman marrying a foreigner; *Chinese Exclusion Case*, 130 U. S. 581, 603, 605, and *Fong Yue Ting* v. *United States*, 149 U. S. 698, 706, 711-712, sustaining the power of the Congress to exclude or expel aliens; *United States* v. *Gettysburg Electric Railway*, 160 U. S. 668, sustaining the power of the United States to condemn land for the purpose of erecting a memorial upon a battlefield.

See also, *The Insular Cases* (*Downes* v. *Bidwell*, 182 U. S. 244, 288, 300; *Dorr* v. *United States*, 195 U. S. 138, 140, 143, 149; *Balzac* v. *Porto Rico*, 258 U. S. 298, 305); *Selective Draft Cases*, 245 U. S. 366, 377; *McGrain* v. *Daugherty*, 273 U. S. 135, 161; *Burnet* v. *Brooks*, 288 U. S. 378, 396.

v. *Maryland, supra*), and statutes making indefinite paper promises legal tender (*Legal Tender Cases, supra*, and *Juilliard* v. *Greenman, supra*), although nothing whatever is said in the Constitution about banks, incorporation, or legal tender authority in the national government. Application of the principle of construction referred to has resulted in rulings sustaining the national power to make currency issued under its authority the exclusive form of money in this Nation (*Veazie Bank* v. *Fenno*, 8 Wall. 533; *National Bank* v. *United States*, 101 U. S. 1, 6), and to restrict the owner of coined money of the United States to such use of it as is consistent with the governmental imprint fixing its value (*Ling Su Fan* v. *United States*, 218 U. S. 302). All these were powers long exercised by sovereigns of other nations, as shown hereafter. (See *post* pp. 47-50.) And this Court expressly said so. In *Juilliard* v. *Greenman, supra*, in reiterating and confirming the constitutional power of the Congress to create paper money and make it legal tender for contracts made after its passage as well as before, and to do so in time of peace as well as in time of war, the Court stated that the challenged enactments "accord with the use of sovereign governments", and were an exercise of a power "universally understood as belonging to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States." In *Ling Su Fan* v. *United States*, 218 U. S. 302, 310, the Court said:

> "The power to 'coin money and regulate the value thereof, and of foreign coin,' is a prerogative of sovereignty and a power exclusively vested in the Congress of the United States. * * * " (p. 310).

2. Congress is empowered to provide the people with a national monetary system and a national currency suitable to their needs, and to secure to them the full and unimpaired benefits thereof through the adoption of any measures appropriate either to the accomplishment of such purpose or for the removal of obstructions thereto.

As said in *The Legal Tender Cases*, 12 Wall. 457, 545 (1870):

> "* * * *Whatever power there is over the currency is vested in Congress.* If the power to declare what is money is not in Congress it is annihilated." (Italics ours.)

The power of Congress to provide the people with a national monetary system and a national currency suitable to their needs and to secure to them the full and unimpaired benefit thereof by any measures appropriate either to the accomplishment of such purpose or to the removal of obstructions thereto was established in *Veazie Bank* v. *Fenno*, 8 Wall. 533 (1869), and subsequently affirmed in the *Legal Tender Cases*, and *Juillard* v. *Greenman*, *supra*.

Veazie Bank v. *Fenno*, *supra* involved the constitutionality of an act of Congress imposing a tax of 10 per cent. upon the circulation of state bank notes. It was contended that the purpose of this tax was not to raise revenue, but to prohibit the circulation of such bank notes and thus to confine the circulating medium to currencies authorized by Federal statute and, as such, beyond any express power delegated to Congress, or the exercise of any power necessary and proper to carry the same into execution. In sustaining the constitutionality of this act, the Court said (p. 548):

> "It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress. And it is settled by the uniform practice of the government and by repeated decisions, that Congress may constitutionally authorize the emission of bills of credit. * * *
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> "The methods adopted for the supply of this currency were briefly explained in the first part of this opinion. It now consists of coin, of United States notes, and of the notes of the National banks. * * *
>
> "Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile."

See also *National Bank* v. *United States*, 101 U. S. 1 (1879).

The character of the monetary system to be established, what forms of currency shall be provided and what shall be their legal tender qualities, are at all times matters for the determination of Congress. *Veazie Bank* v. *Fenno, supra; Legal Tender Cases, supra; Ling Su Fan* v. *United States*, 218 U. S. 302.

In sustaining the power of Congress to issue paper money and to make the same legal tender in the fulfillment

of contracts, previously as well as thereafter made, the Court stated, in *Juillard* v. *Greenman, supra*:

> "Such being our conclusion in matter of law, the question whether at any particular time, in war or in peace, the exigency is such, by reason of unusual and pressing demands on the resources of the government, or of the inadequacy of the supply of gold and silver coin to furnish the currency needed for the uses of the government and of the people, that it is, as matter of fact, wise and expedient to resort to this means, is a political question, to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterwards passed upon by the courts." (110 U. S. at p. 450.)

3. In the exercise of its power over the monetary system and the currency, the Congress is empowered to declare of what the currency shall consist, to give to every unit and description thereof the character and qualities of money having a legally defined value, irrespective of the intrinsic value of the substances out of which made, to regulate the value of such money and to make every unit and description thereof legal tender at its face value for the discharge of all money obligations, public or private, whether previously existing or subsequently incurred.

The power of Congress to determine of what the national currency shall consist, to the exclusion of all other forms of money is indisputable. [*Veazie Bank* v. *Fenno*, 8 Wall. 533 (1869), *Legal Tender Cases, Knox* v. *Lee*, 12 Wall. 457 (1870), *Juilliard* v. *Greenman*, 110 U. S. 421 (1884)].

Having at any time defined of what the national currency shall consist, it is within the power of Congress to

give to every description thereof, of whatever substance made and without regard to its intrinsic value as a commodity, all the character and qualities of money having a legally defined and uniform value by requiring its acceptance at its face value in the fulfillment of all contracts solvable in money, without reference to the time when such contracts were made. This it may do although the new money is of less intrinsic value than that in circulation at the time when the contract was made. The existence of these powers was settled beyond dispute in *The Legal Tender Cases, supra,* and *Julliard* v. *Greenman, supra.* At the outset of its opinion in the *Legal Tender Cases, supra,* the Court said:

> "The controlling questions in these cases are the following: Are the acts of Congress, known as the legal tender acts, constitutional when applied to contracts made before their passage; and, secondly, are they valid as applicable to debts contracted since their enactment? These questions have been elaborately argued, and they have received from the court that consideration which their great importance demands. It would be difficult to overestimate the consequences which must follow our decision. They will affect the entire business of the country, and take hold of the possible continued existence of the government." (12 Wall. at p. 529.)

After some further discussion of the untoward consequences of a decision adverse to the constitutionality of the legal tender acts, the Court thus stated the questions before it for determination and their relation to each other:

> " * * * And there *is no well-founded distinction to be made between the constitutional validity* of an act of Congress declaring treasury notes a legal tender for the payment of debts contracted *after*

its passage and that of an act making them a legal tender for the discharge of all debts, as well as those incurred *before* as those made after its enactment. There may be a difference in the effects produced by the acts, and in the hardship of their operation, but in both cases the *fundamental question, that which tests the validity of the legislation, is, can Congress constitutionally give to treasury notes the character and qualities of money?* Can such notes be constituted a legitimate circulating medium, *having a defined legal value? If they can, then such notes must be available to fulfil all contracts (not expressly excepted) solvable in money, without reference to the time when the contracts were made.* Hence it is not strange that those who hold the legal tender acts unconstitutional when applied to contracts made before February, 1862, find themselves compelled also to hold that the acts are invalid as to debts created after that time, and to hold that both classes of debts alike can be discharged only by gold and silver coin." (Italics ours.) (*Ib.* p. 530.)

The Court thus treated the power of Congress to make paper money legal tender for the payment of pre-existing debts as not only subordinate to the "fundamental question" presented, but as a power necessarily included in the power, if possessed by Congress, to endow the national currency of every description with the "character and qualities of money * * * having a defined legal value" by requiring its acceptance in the discharge of all debts, public or private. Such power, the Court held, Congress had, and, as an incident thereto, the power to require such acceptance in the fulfilment of pre-existing contracts. Otherwise, it is self-evident that Congress would be without the power effectively to give to the nation a currency of uniform and defined legal value.

As is shown by the approach and the holding of the Court in the *Legal Tender Cases,* the power to declare of what money shall consist of necessity includes the power to provide to what extent the same shall be received dollar for dollar in the discharge of all money obligations whether for the payment of debts, the sale of goods, the performance of services, the payment of taxes, etc. Money, as such, has no value except that resulting from its required acceptance in the discharge of such obligations. That which circulates as money may be valuable as a commodity, as in the case of gold, or practically valueless, as in the case of paper money. In either event it acquires value as money only through the imprint of the sovereign which makes it such (*Ling Su Fan* v. *United States, supra*), and by its required acceptance in discharge of obligations payable therein.

Accordingly, in determining of what money shall consist and in giving it a legally defined value, the Congress may disregard entirely the so-called intrinsic value of the substance out of which made, *i.e.* the value of such substance as a commodity.[4] *Legal Tender Cases, supra; Ling Su Fan* v. *United States, supra.* Without regard to its value as a commodity, as said in *Ling Su Fan* v. *United States,*

> "public law gives to such coinage [in that case silver coins] a value which does not attach as a mere consequence of intrinsic value. Their quality as a legal tender is an attribute of law aside from

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[4]As stated in the *Legal Tender Cases, supra,* with respect to coined money:

> "The Constitution does not ordain what metals may be coined or prescribe that the legal value of the metals, when coined, shall correspond at all with their intrinsic value in the market." (at p. 547 of 12 Wall.)

> their bullion value. They bear, therefore, the impress of sovereign power which fixes value and authorizes their use in exchange." (pp. 310-311.)

The value of money as money therefore depends upon its legal tender qualities, and their preservation, and not upon the "commodity" value of the substance out of which made. Its value in use as money may be determined by the sovereign alone, the exercise of whose powers in that regard may not be circumvented or obstructed by any private citizen. Otherwise the power to determine of what money shall consist and at what value it shall be received in the discharge of all obligations, would rest not with the sovereign but with its subjects.

Accordingly, the Sovereign, where several forms of money are in existence, may provide for the maintenance of each at a uniform value either by the enactment of a parity statute or by any other appropriate means to that end. *Ling Su Fan* v. *United States, supra.*

It was contended in the *Legal Tender Cases* that, assuming the power of Congress to make irredeemable paper promises legal tender at face value in the fulfilment of future contracts, it was without power to require their acceptance as legal tender in the fulfilment of pre-existing obligations. After considering this question at length, the Court held that Congress was possessed of such power, since

> "contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority" (p. 551).

Indeed, this ruling was foreshadowed by the statement at the outset that the determination of this question was one

necessarily governed by the determination of the fundamental question, to wit, the authority of the Government to confer upon paper money those legal tender qualities upon which its use and value as money depend. As held by the Court, this being the authority exercised, all private contracts must yield thereto, and could not be permitted to defeat the exercise of such authority (see *post* pp. 62-68; 56-61).

4. The power of the Congress over the monetary system and the currency and to determine of what money shall consist, includes the power to regulate its volume, to enhance or debase its value, to "decry" or withdraw from circulation existing forms of money, and to provide new forms of money and require their acceptance as a full substitute at equal tender value with those forms of money for which it is substituted.

These powers have been exercised by the sovereign from time immemorial. In the great case of *Mixed Money,* decided *circa* 1600 by the Kings Court (Sir John Davies' Reports, p. 48) the Court said that "* * * the King by his prerogative may make money of what matter and form he pleaseth, and establish the standard of it" (p. 55); that "* * * the King by his prerogative may also put a price or valuation on all coins" (p. 53), and that the King's prerogative extends "to give value to base metal by his impression or character" (p. 68); that he may "change his money in substance and impression, and enhance or debase the value of it, or entirely decry and annul it, so that it shall be but bullion at his pleasure" (p. 55); and these rules were stated as settled at common law and in the civil and Roman law, and were supported by a wealth of precedent.

Summarizing the result of its historical inquiry as to the precedents and law upon this point, the Court concluded:

> "And so it is manifest, that the kings of *England* have always had and exercised this prerogative of coining and changing the form, and when they found it expedient of enhancing and debasing the value of money within their dominions; and this prerogative is allowed and approved not only by the common law, but also by the rules of the imperial law."

This power to debase the coinage was a power frequently exercised by the Kings of England and other sovereigns. It was also well settled by the law of England at the time of the adoption of the Constitution that the Sovereign could require the acceptance of the debased coinage at a legal tender value equal to that which it superseded, for all purposes, including the fulfillment of contracts previously made. *Breckenridge on Legal Tender*, Chapters III, IV and V, pp. 9-26; 38-39; 46-47; *Case of Mixed Money, supra.*

The extent of this power is demonstrated by the Proclamation of Elizabeth sustained in the case of *Mixed Money*. An Irish merchant, during the reign of Queen Elizabeth and at a time when "the pure coin of England was current within" Ireland, contracted to pay an English merchant "100 l. *Sterling, current and lawful money of England*" on a named future date. Before the due date the Queen by Royal Proclamation established a new currency for use in Ireland alone, consisting of "Mixed Money" of less intrinsic value than English money, but issued in the same denominations and having the same face

value. The Proclamation required the acceptance of the new and baser money, shilling for shilling for the old, upon tender "for payment of any wages, fees, stipends, debts, etc.", on pain of punishment for contempt of the royal prerogative; "And to the intent that this *mixed money* should have the better course and circulation, it was further declared by the same proclamation, that after the 10th day of *June* immediately following, all other money which had been current within this kingdom, before the said proclamation, should be cried down and annulled and esteemed as bullion, and not as lawful and current money of this kingdom" (pp. 48-49). The Proclamation applied to Ireland alone. There was no debasement of English coinage, and the new Irish money was not required to be accepted, shilling for shilling, in England with English coin of the same denominations but of greater intrinsic value.

The question was whether "a tender of the 100 l. in the Mixed Money of the new standard, in performance of the obligation" was sufficient. According to the Proclamation it was. The sole question, therefore, was whether the making of such Proclamation was within the prerogative of the Sovereign. The Court held that it was.

This case, not the *Feist* case, is the English parallel of our case, since in the *Feist* case the question determined was merely as to the intention of the parties, and there was no proclamation, decree or statute (as there was in the *Mixed Money* case and is in the case at bar) requiring acceptance of current money of less intrinsic value in lieu of that contracted to be paid.

Historically, therefore, the power of the sovereign to determine of what money shall consist, to give to it a legally defined and uniform value, and to regulate its value, includes the power to require the acceptance of a debased

coinage or currency having the same legal tender qualities in the discharge of all obligations, past, present or future, as that which it supersedes or with which it circulates. Indeed, without this, the power to change the monetary system at will would be ineffective. Otherwise, the power to determine what shall be accepted as money and the value at which it is to be accepted would not rest with the sovereign but with the citizens individually, who could take "money" or refuse it in the discharge of obligations, as they chose, or fix such value upon it by contract as they liked. The very essence of the sovereign's control over the money and monetary system of any nation lies in its right to require that that which it has declared to be money shall be legal tender at its face value in the discharge of all obligations.

5. The Power to Regulate the Value of Money Authorizes the Congress to Control the Use of Money as a Standard of Value, as well as to Regulate its Value as a Medium of Exchange.

The Constitution empowers the Congress "to regulate the value" of money.[4a]

The petitioner argues that this grant means that the Congress may establish a "uniform measure of exchange whereby obligations could be discharged with a uniform *medium* of exchange, having some relation to the uniform *measure* of exchange". (Brief, p. 29) He likens this

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[4a] "The Congress shall have power * * * To coin Money, regulate the Value thereof, and of Foreign Coin, and fix the Standard Weights and Measures." Const. Art. I, sec. 8, cl. 5. The power of the Congress in respect of forms of money other than coins "is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof." *Juillard* v. *Greenman, supra*, at p. 448.

grant to the grant of power "to fix the Standard of Weights and Measures" (*id.*)

This is too narrow a view of the extent of this power. Money is *both* a medium of exchange and a measure or standard of value.[5] "There are three traditional functions performed by money, those of providing a medium of exchange, *a standard of value*, and a store of savings."[6] An unqualified grant of power "to *regulate* the *value*" of money necessarily comprehends the regulation of its value when used for the performance of any of its several functions *as money*, and hence includes the power to control the use of *money* as a standard of value.[7]

This construction gives appropriate weight to the established meanings of the words "money", "regulate", and "value". The construction is inescapable if full meaning is is to be given to the word "money", as above defined. The word "regulate" means "to control" or "to govern",[8] and

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[5]The Oxford Dictionary defines "Money" as "a medium of exchange *and* measure of value".

[6]Sir Charles Morgan-Webb, "The Rise and Fall of the Gold Standard" (1934).

[7]No question as to governmental power to control the use of commodities, as such, as a standard of value in private contracts, is involved in this case, and no such question is raised by any of the current gold legislation. The contract in suit here is a money contract in every respect,—issued in consideration of the payment of money, and to be satisfied only by the payment of money.

[8]The *Oxford* Dictionary thus defines the verb "to regulate":

> "1. *To control, govern,* or direct by rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings.
>
> "2. To adjust, in respect of time, quantity, force, etc. with reference to some standard or purpose; esp: to adjust (a clock or other machine) so that the working may be accurate."

Webster's Dictionary thus defines it:

> "To adjust or *control* by rule, method, or established mode.
>
> "To subject to governing principles or laws.
>
> "To adjust or maintain with respect to a desired rate, degree or condition, especially to adjust so as to work accurately."

it has been given that meaning by this Court, as used in another clause of the Constitution.[9] The word "value" connotes equivalency according to a standard.[10] The precision in the use of English in the Constitution is universally admitted, and is clearly demonstrated by the deliberate choice of the verb "regulate" (the value of money) as contrasted with the use of the verb "fix" (the standard of

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[9]Speaking of the authority of the Congress "to *regulate* Commerce with foreign nations, and among the several states", this Court said, in *Second Employers Liability Cases*, 223 U. S. 1, 47, 48, that " 'To regulate', in the sense intended, is to foster, protect, *control* and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large" (p. 47); and that the Congress may legislate with respect to any matter which "bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of" interstate commerce (p. 48). This is especially significant since this Court has referred to the commerce clause as one of the sources of the monetary powers of the Congress. See *Legal Tender Cases* and *Juilliard* v. *Greenman*.

[10]The *Oxford* Dictionary thus defines "value":

"I. 1. That amount of some commodity, medium of exchange, etc., which is considered to be an *equivalent* for something else; a fair or adequate equivalent or return.

"2. The material or monetary worth of a thing; the amount at which it may be estimated in terms of some medium of exchange or other standard of a similar nature.

* * * * * * * * * *

"4. The equivalent (in material worth) of a specified sum or amount.

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"6. The *relative status* of a thing, or the estimate in which it is held, according to its real or supposed worth, usefulness, or importance."

Webster's Dictionary thus defines it:

"1. The property or aggregate properties of a thing which render it useful or desirable, or the degree of such property or sum of properties; worth; excellence. 2. *Economics.* a Efficiency in exchange; purchasing power; market value. * * *"

weights and measures), when dealing with a distinct subject in the same clause.

The construction of the grant given above is conclusively established as the only acceptable one when consideration is given to the meaning of the express power to regulate the value of foreign coin. This, obviously, *cannot* refer to a mere power to determine of what substance the units of the circulation shall consist, to prescribe their denominations, establish their relative values *inter sese,* and to change these values from time to time. The foreign coin has already been subjected to these regulations by the sovereign power which issued it. The grant of power to the Congress "to regulate" its "value" *must contemplate a power to regulate its use in this country as a standard of value.*

If this construction be correct—if the grant of power to regulate the value of money confers upon the Congress authority to control the use which may be made, as such, of the money of the United States, as a standard of value—*a fortiori* no mere private contract, pre-existing or otherwise, can have any validity, in the face of an exercise of such power by the Congress, to give to any kind of money of the United States, as such, any worth as a standard of value other than that declared by the Congress.

6. The power to determine of what money shall consist and to regulate the value thereof, includes the power to determine and regulate the value of the several units of the currency in terms of each other and to prohibit the attempted use of one kind of money as a commodity for the purpose of realizing in another kind of money a value greater than the stated value of the first.

That Congress has the power to determine and regulate the value of the several units of the National currency in terms of each other is, of course, plain from what has already been said.

It follows as a necessary corollary that it may control and prohibit the use of one kind of money as a commodity for the purpose of realizing thereon a greater value in another kind of money than the legally defined value of the first. Otherwise, the Congressional power to determine and regulate the value of the several units of money in terms of each would be illusory and could be rendered completely nugatory. Indeed, such power would really reside not in the sovereign, but in its subjects.

This conclusion is inescapably to be drawn from the decision of the Court in *Ling Su Fan* v. *United States,* 218 U. S. 302. In that case statutes prohibiting the exportation, mutilation or melting down of coins (in order to take advantage of their bullion value, which was higher than their face value) were sustained as against an attack by the owner of such coins based upon the due process clause of the Fifth Amendment. The Court there said:

> "Conceding the title of the owner of such coins, yet there is attached to such ownership those limitations which public policy may require by reason

> of their quality as a legal tender and as a medium of exchange. These limitations are due to the fact that public law gives to such coinage a value which does not attach as a mere consequence of intrinsic value. Their quality as a legal tender is an attribute of law aside from their bullion value. They bear, therefore, the impress of sovereign power which fixes value and authorizes their use in exchange."

If one possessed of money composed of a commodity of intrinsic worth may be prevented by statute from realizing more than its face value, by exportation or melting down, clearly he may be prevented, *in praesenti,* from demanding more than its face value in other forms of *money* in *exchange* for it. In short, he may be prohibited from treating that piece of money as a commodity. It follows irresistibly that an attempt to realize the intrinsic commodity value of that piece of money, *in the future,* by a contract based upon a consideration of money and creating an obligation payable only in money, may likewise be rendered unavailing by the exercise of Governmental power.

An attempt by a money contract to realize upon the intrinsic value of the commodity content of units of money constitutes an attempt, for private purposes, to regulate the value of one form of money in terms of another, and to use one form of money as a standard of value, in usurpation of the exclusive prerogatives of the sovereign. This is so, whether that power finds its source in the power to determine and regulate the value of the several units of the currency in terms of each other, as a part of the broad power to determine of what money shall consist and to require the acceptance of all forms thereof at equal value, or in the specific power to regulate the value of money.

7. As in respect of all other powers, the power conferred includes the power to preserve and protect its exercise for the accomplishment of the objects embraced therein and to remove any and all obstructions thereto by the adoption of any appropriate means, notwithstanding any resulting interference with private rights of property or contract.

Article I, § 8, clause 18 confers upon Congress the power

> "to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof."

This power is no less an express power than are the specific powers conferred by the same section (*Legal Tender Cases, supra,* at p. 550; *Ruppert* v. *Caffey,* 251 U. S. 264, 301). The powers thus conferred (commonly referred to as the auxiliary powers of the Congress) are equally comprehensive, whether used in aid of an enumerated power or a resulting or composite power, or of another auxiliary power. *Legal Tender Cases, supra; Ruppert* v. *Caffey, supra.*

(A) THE COMPREHENSIVENESS OF THIS POWER TO PRESERVE THAT WHICH CONGRESS HAS CREATED AND TO PREVENT OBSTRUCTION OF OR INTERFERENCE WITH ITS UNIMPAIRED USEFULNESS FOR THE ACCOMPLISHMENT OF THE PURPOSES FOR WHICH CREATED IS EVIDENCED BY THE PREVIOUS DECISIONS OF THIS COURT ARISING UNDER THE POWER OF CONGRESS OVER THE MONETARY SYSTEM AND CURRENCY.

The extent of the power under review finds illustration in the decisions, previously discussed, relating to the mone-

tary powers of the Congress. Thus, where the Congress in the exercise of its settled power to provide a uniform currency for the whole country declares it to be the public policy of the United States so to do, it may make that declaration of policy and the exercise of that power effective by denying to foreign coins the quality of legal tender, or by restraining the circulation as money of notes of individuals or of state banks—although this nullifies the contract rights of such banks secured to them by their charter (*Veazie Bank* v. *Fenno,* 8 Wall. 533, 549)—or of municipalities (*National Bank* v. *United States,* 101 U. S. 1, 6). Similarly, having determined upon the policy of maintaining a parity between its coinage and its currency, it may prohibit the exporting or the mutilation or melting down of coins issued under its authority (*Ling Su Fan* v. *United States,* 218 U. S. 302). It may adopt appropriate measures, including the imposition of criminal penalties, to maintain the integrity of its money and to protect the public against spurious, simulated or debased money, and its power in this regard is not limited to, but is wider than, the power to punish counterfeiting expressly conferred by Art. I, § 8, cl. 6 of the Constitution. (*Baender* v. *Barnett,* 255 U. S. 224, 227; *United States* v. *Marigold,* 9 How. 560, 567-568; *Legal Tender Cases,* 12 Wall. 457, 535-536, 544-545.)

(B) THE COMPREHENSIVENESS OF THIS POWER IS ALSO EVIDENCED BY THE DECISIONS OF THIS COURT IN RESPECT OF THE RELATED POWER OF THE FEDERAL GOVERNMENT TO CREATE NATIONAL BANKS.

The power of Congress over the monetary system and currency is closely related to its power over banking agen-

cies as embraced in the power to create national banks. Indeed, in so far as the latter includes the power to authorize the issue of bank notes and to protect their unimpaired use for all purposes by prohibiting the issue of state bank notes, it may properly be regarded as an exercise of the power over the monetary system and the currency.

The power to create a national bank is nowhere specifically conferred by the Constitution. Like the power over the monetary system and currency, it was rested by the Court upon a combination of powers or upon the aggregate powers of the Government (*McCulloch* v. *Maryland, supra*). The existence of this power was originally sustained as a means necessary and appropriate for carrying on the fiscal operations of the Government. In the exercise of the further power to "preserve" that which Congress had created and "to remove all the obstacles" which "retard, impede, burden, or in any manner control the operations" of the thing created (*McCulloch* v. *Maryland*, p. 426), it has been held that Congress may authorize banks created under its authority to engage in the business of private banking (*Osborn* v. *Bank of United States*, 9 Wheat. 738) and to act as trustees, executors and administrators (*First National Bank* v. *Fellows*, 244 U. S. 416; *State of Missouri* v. *Duncan*, 265 U. S. 17), and it is not a valid objection that only a minor portion of the business of such banks relates to the fiscal affairs of the Federal Government (*Smith* v. *Kansas City Title Company*, 255 U. S. 180, 210).

The exercise of these powers does not rest upon any delegation to Congress of any general power over banking, over the administration of estates, or over contractual relations of private individuals made in relation thereto. Such powers are reserved to the states, and the act sus-

tained in each of these cases was *pro tanto* an invasion of such reserved powers. They were sustained as an exercise of the power of Congress to preserve, protect and foster the unimpaired usefulness of the instrumentalities created by Congress for the purposes for which created.

In order to preserve these banking agencies of the national government from local obstruction, it has been held that they are constitutionally exempt from state taxation (*McCulloch* v. *Maryland, supra; Osborn* v. *Bank of United States, supra; Smith* v. *Kansas City Title Co., supra*); and on similar grounds they are not subject to state usury laws (*Farmers & Mechanics Nat. Bank* v. *Dearing,* 91 U. S. 29), insolvency laws (*Davis* v. *Elmira Savings Bank,* 161 U. S. 275) or criminal laws (*Easton* v. *Iowa,* 188 U. S. 220). The extent of the protective power of the Congress in this field is demonstrated by this Court's ruling that "when it is necessary in order to prevent the evil to make the law embrace more than the precise thing to be prevented, it may do so" (*Westfall* v. *United States,* 274 U. S. 256).

(C) THE EXTENT OF THIS POWER IS FORCEFULLY ILLUSTRATED BY THE DECISIONS ARISING UNDER THE COMMERCE CLAUSE, ONE OF THE CLAUSES UPON WHICH THE POWER OF CONGRESS OVER THE MONETARY SYSTEM AND CURRENCY IS BASED.[11]

In order to make effective its power to regulate interstate commerce, the Congress may enact all appropriate legislation for its protection and advancement (*The Daniel Ball,* 10 Wall. 557, 564); and may adopt measures to pro-

[11]See *Juilliard* v. *Greenman, supra,* at pp. 439, 448.

mote its growth and insure its safety (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697). It may regulate relations between carriers and their employees although such relations are in their essence contractual (*Mondou* v. *New York, N. H. & H. R. R. Co.*, 223 U. S. 1, 47), and in so doing may strike down previously existing contracts and arrangements relating thereto. *Philadelphia, B. & W. R. Co.* v. *Schubert*, 224 U. S. 603. It may provide for the creation and maintenance of an adequate system of transportation suitable to the requirements of commerce and of the people. To this end it may require a carrier to surrender a portion of its revenues derived from rates in themselves reasonable, as applied to the public, paid in discharge of contractual obligation created for the carriage of persons and property (*Dayton & Goose Creek RR. Co.* v. U. S., 263 U. S. 456); exercise affirmative control over the construction and abandonment of railroads engaged in interstate commerce, although located wholly within a single state (*Colorado* v. *United States*, 271 U. S. 153), thus, in the case of abandonment, completely nullifying the contract right of the state to require such a carrier to observe the previously existing contract obligations imposed by its charter. It may also exercise an affirmative control over practices or contracts impeding, creating a burden upon interstate commerce, or obstructing its freedom or impeding its flow, all in the interest of the public affected thereby. *United Leather Workers* v. *Herkert*, 265 U. S. 457, 469; *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1.

In order to free such commerce from the restraint of monopoly or unreasonable restraints in trade, it may strike down pre-existing contracts violative thereof, as well as prohibit the making of new contracts producing the same

result. *Addyston Pipe & Steel Company* v. *United States,* 175 U. S. 211.

In order to prevent any obstruction to interstate commerce, it may require the removal or alteration of a bridge theretofore lawfully erected over navigable waters, thus either destroying its value entirely or reducing the same in the state in which it exists. *Union Bridge Co.* v. *United States,* 204 U. S. 364, 399, 400. Finally, for the purpose of insuring to the people the benefit of an adequate system of transportation, it may assume affirmative control over intra-state as well as interstate rates, *Wisconsin R. R. Co.* v. *C. B. & Q. R. R.,* 257 U. S. 563, even though the effect of the exercise of such power is to set aside and render completely nugatory, the contractual obligation of the carrier arising from its charter to carry passengers at a contract or charter rate prescribed thereby. *State of New York* v. *United States,* 257 U. S. 591.

Many other illustrations might be given of the breadth and comprehensiveness of the power of Congress affirmatively to preserve and foster foreign and interstate commerce, irrespective of the effect of the control exercised thereover either upon the rights of the sovereign states or the rights of private individuals, whether growing out of pre-existing contracts or arrangements or otherwise.

V

THE RESOLUTION WAS BOTH (1) AN AFFIRMATIVE EXERCISE OF THE POWERS OF THE CONGRESS OVER THE MONETARY SYSTEM AND THE CURRENCY AND TO REGULATE THE VALUE OF MONEY, AND (2) A MEASURE BOTH APPROPRIATE AND NECESSARY TO PRESERVE THE SAME AND TO REMOVE AN OBVIOUS OBSTACLE TO THEIR EXERCISE.

1. Private individuals may not by prophetic discernment, through contracts previously entered into, any more than by contracts subsequently made, withdraw from the control of the Congress any part of its legislative field or limit or obstruct the exercise of its powers therein.

In *Philadelphia, Baltimore & Washington R.R.* v. *Schubert*, 224 U. S. 603 (1912), the appellant claimed exemption from a statutory provision rendering void any contract, the purpose of which should be "to enable any common carrier to exempt itself from any liability created by this Act" (the Employer's Liability Act) upon the ground, among others, that such provision of the Act, as applied to a pre-existing contract creating such exemption, was beyond the constitutional power of the Congress. The Court, speaking through Mr. Justice Hughes, sustaining the constitutionality of this provision, said (at pp. 613-614):

> "The power of Congress, in its regulation of interstate commerce, and of commerce in the District of Columbia and in the Territories, to impose this liability, was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. *To subordinate the exercise of the Federal authority*

> *to the continuing operation of previous contracts, would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements.* The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish uniform rules, immediately obligatory, which as to future action should transcend all inconsistent provisions. *Prior arrangements were necessarily subject to this paramount authority.*"

The principles enunciated in that case were reiterated and applied in *Sproles* v. *Binford*, 286 U. S. 374, 390-391.

In the affirmative exercise of its power to regulate commerce, the Congress may also strike down contracts, or provisions therein, between private individuals and a sovereign state, where their continuing operation, if permitted to survive, would have the effect either of withdrawing from the control of the Congress any part of its legislative field, or prevent or obstruct the full exercise of its powers therein. *State of New York* v. *United States*, 257 U. S. 591 (1922); *State of Colorado* v. *United States*, 271 U. S. 153 (1926). Both of these cases arose under the Transportation Act, having for its purpose the establishment of an adequate system of transportation. In *State of New York* v. *United States*, *supra*, the Interstate Commerce Commission, in the exercise of powers conferred upon it by that Act, ordered the New York Central Railroad to increase its passenger fares within the State of New York from 2¢ to 3.6¢ per mile, which order this Court sustained. By its charter the railroad was compelled to carry passen-

gers at 2¢ per mile. The orders of the Interstate Commerce Commission are legislative in character, and when made, have the force of a statute. The effect of the order sustained was thus to nullify the contract right of the state to require carriage of passengers at 2¢ per mile. It did not, as in *Philadelphia, Baltimore & Washington Railroad* v. *Schubert, supra,* annul the contract entirely. The New York Central was still bound thereunder to carry passengers, but the order of the Commission changed *the measure of payment* therefor from that contained in the charter to that prescribed by authority of the United States.

In *State of Colorado* v. *United States, supra,* the Commission under authority of the Transportation Act authorized the abandonment of a railroad located wholly within the State of Colorado. In so doing it completely nullified the contract between the State and the Railroad embodied in its charter, under which it was required to operate its railroad.

See, also, *Louisville & Nashville R. R.* v. *Mottley,* 219 U. S. 467, *Calhoun* v. *Massie,* 253 U. S. 170, *Great Northern Ry. Co.* v. *Sutherland,* 273 U. S. 182, in each of which the Act of Congress in question nullified, affected or impaired the value of pre-existing private contracts.

In *Calhoun* v. *Massie, supra,* the Court sustained the validity of an act, which had the effect of revising downward and changing the measure of payment under a contract with an attorney for the prosecution of claims against the United States, on the ground that the sovereign power of the Congress to grant claims for relief against the United States included as a necessary incident the power to do so upon "such condition as it deemed proper".

The power of the Congress over the monetary system and currency is as great as its power to regulate inter-

state commerce, and its right to nullify and affect pre-existing contracts, as well to forbid the making of new contracts, which, if permitted to continue or be made, would either limit or obstruct the exercise of such powers, is equally unlimited. Indeed, since substantially all contracts are money contracts, it is apparent that any exercise of the powers of Congress over the monetary system affects to some extent the bulk of the contracts of the Nation, and that private contracts, if permitted to fetter the exercise of the powers of Congress in the monetary field, would have the effect of nullifying the Congressional powers therein to a greater extent than in almost any other sphere reserved to it.

The first case in which the Congress, in the exercise of its power over the monetary system and the currency, nullified pre-existing contracts was by the statute sustained in *Veazie Bank* v. *Fenno*, 8 Wall. 533 (1869), the effect of which was to abrogate completely the contract right of state banks, arising from their charters, to issue state bank notes. In that case, as in *State of New York* v. *United States, supra*, and *State of Colorado* v. *United States, supra*, the contract rights so abrogated were contracts between private parties and a sovereign state.

Subsequently, the same principle was applied and the same right was upheld in *The Legal Tender Cases* in connection with the power of the Congress to make all forms of money legal tender of equal value in the fulfilment of contracts, whether made before or after their passage.

As we have seen, the very essence both of the power conferred upon the Congress to regulate the value of money and of the broader power over the Nation's monetary system and currency is its power to establish and preserve unimpaired the legal tender qualities and value of all

descriptions of the currency. Although the dissenting justices in *The Legal Tender Cases* denied the power of the Congress to make anything other than metallic money legal tender, the majority held to the contrary, and no one at this date would deny the right of the Congress to provide a modern monetary system and currency consisting largely of paper money, resting on such a base as the Congress may determine, and to make every description thereof legal tender at face value for all purposes.

The Court in those cases also divided upon the question as to whether the new and intrinsically less valuable money, created by the Government and given the quality of legal tender, could be required to be accepted as such at its face value in discharge of pre-existing contracts, thus impairing their value. The majority held that it could. The minority asserted that it could not. The question was squarely presented and as squarely decided. The observations of the majority in that regard are, therefore, not *dicta*. In asserting that the Congress was not possessed of this power, the minority approached the question primarily from the standpoint of due process. The majority, on the other hand, approached the question primarily from the standpoint of power, and, finding that the power existed, denied the application of the due process clause as a restraint thereon.

Referring specifically to the resulting interference with private contracts and of rights assumed to have been acquired thereunder, the Court said:

> "* * * Contracts for the delivery of specific articles belong exclusively to the domain of State legislation, while contracts for the payment of money are subject to the authority of Congress, at least so far as relates to the means of payment. They are engagements to pay with lawful money of the United

States, and Congress is empowered to regulate that money. It cannot, therefore, be maintained that the legal tender acts impaired the obligation of contracts.

"Nor can it be truly asserted that Congress may not, by its action, indirectly impair the obligation of contracts, if by the expression be meant rendering contracts fruitless, or partially fruitless. Directly it may, confessedly, by passing a bankrupt act, embracing past as well as future transactions. This is obliterating contracts entirely. So it may relieve parties from their apparent obligations indirectly in a multitude of ways. It may declare war, or, even in peace, pass non-intercourse acts, or direct an embargo. All such measures may, and must operate seriously upon existing contracts, and may not merely hinder, but relieve the parties to such contracts entirely from performance. It is then, clear that the powers of Congress may be exerted, although the effect of such exertion may be in one case to annul, and in other cases to impair the obligation of contracts. * * *" (pp. 549-550)

"If, then, the legal tender acts were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden, unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by the fundamental law. But, as already intimated, the objection misapprehends the nature and extent of the contract obligation spoken of in the Constitution. As in a state of civil society property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, *so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.*" (pp. 550, 551) (Italics ours)

The principle of all of the cases cited is, of course, that stated in *The Legal Tender Cases*, to wit, that private contracts the subject matter of which is within the field of congressional power, are made in subordination to the exercise of that power and must yield thereto. Nor is it important whether the resulting nullification or impairment of pre-existing private contracts results from the incidental effect of legislation within the congressional field, as in *Veazie Bank* v. *Fenno, supra*, or by a statute aimed directly and in terms at the contract itself, as in *Philadelphia, Baltimore & Washington R. R.* v. *Shubert, supra*, *Calhoun* v. *Massie, supra*, and in the instant case.

2. By prophetic discernment, private individuals have attempted to withdraw billions of dollars of obligations payable in lawful money of the United States from the exercise by the Congress of its power over the monetary system and the currency and to regulate the value of money.

Such was the conceded purpose of the clause at its inception. When the plaintiff's bond was issued and when substantially all, if not all, gold clause bonds now outstanding were issued, the power of the Congress to require the acceptance at face value of all forms of legal tender irrespective of their relative intrinsic values in the fulfilment of contracts, whether made before or after the adoption of such an act, had been sustained. *Legal Tender Cases, supra*. As stated by the Court, Congress had the power to make the paper currency in question "equivalent in value to the representative in value determined by the coinage acts" (12 Wall. at p. 553). It had likewise been held in that case that contracts payable in money were subject to the authority of the Congress, since the Congress is empowered to regulate the money in which to be paid. The

very purpose of the clause, therefore, was to remove every contract containing such a clause, now amounting to not less than $100,000,000,000, from the exercise of, the legal tender and other powers of the Congress over the money system and the currency.[1]

It is true that in *Trebilcock* v. *Wilson*, 12 Wall. 687, the Court held the legal tender acts inapplicable to contracts calling for payment in specie, *i.e.*, in a particular kind of money. That case, however, turned wholly upon a question of statutory interpretation, the Court holding the act by its terms to be inapplicable to such contracts. The question of power was neither determined nor discussed.

In the absence, therefore, of a statute requiring the acceptance of all forms of money at their face value in the discharge of obligations payable in specie, it was competent for the parties, as they have, to make and enforce such contracts. Giving to the clause the force now claimed for it by the petitioner and others, its purpose was as well to withdraw from the legal tender powers of Congress, among others, all contracts containing such a clause. But, as was said by Mr. Justice Bradley in his concurring opinion in the *Legal Tender Cases*, to hold unconstitutional an act requiring acceptance of legal tender as defined by the Con-

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[1] If "gold coin" contracts, such contracts were obviously attempts to limit the Congressional power to make other forms of currency legal tender for all purposes. In substance, they were attempts to preclude Congress from making such other forms of currency "money" for purposes of discharge of such contracts, since the fundamental characteristic of money and its peculiar value is its legal tender quality.

If "gold value" contracts, such contracts were obvious attempts to limit the Congressional power to make other forms of money "equivalent in value", in the discharge of debts, to gold coin, unless of the same intrinsic value. In other words, they were attempts to preclude any meaningful exercise by Congress of its power to assign to the several units of the currency the legal value without regard to their intrinsic values.

gress in discharge of obligations specifically payable in specie,

> "would completely nullify the power claimed for the government. For it would be very easy, by the use of one or two additional words, to make all contracts payable in specie" (p. 567).

If, therefore, these contracts were made—as it is claimed they were—in anticipation that they might legally survive a subsequent statute requiring them to be discharged at face value in legal tender at the time of payment, they were made for the purpose, and if permitted to stand would have the effect, of withdrawing from the Congressional field so much thereof as private parties had chosen "to bring within the range of their agreements". *Philadelphia, Baltimore & Washington R. R.* v. *Schubert, supra.* As in that case it was said that to permit agreements to have such effect would be to place "the regulation of interstate commerce in the hands of private individuals", so to give the agreement at bar such effect would be to place control of the monetary system and the currency and the regulation of the value of money within the control of private individuals instead of within the control of Congress. As already pointed out, the very essence of the power to determine of what money shall consist, lies in the power to require its acceptance as legal tender at its face value irrespective of the intrinsic value of the substance from which made. As also demonstrated the power to regulate the value of money includes the power to regulate the value of one form of money in terms of another.

As we have pointed out, it was held in the *Legal Tender Cases* themselves that the primary question was whether or not Congress had the power to give to every kind of money

the full character and qualities thereof by maintaining all forms thereof at equal and uniform value in the discharge of all obligations. If, as pointed out by Mr. Justice Bradley, private individuals by contracts, whether previously made or subsequently entered into, may assign to such money a different value from that placed upon it by the Congress, then the legal tender powers of the Congress and its power to regulate the value of money and indeed to determine of what money shall consist are effective only to the extent they are suffered to be effective by the people. Such a conception of the relation of private rights to the powers of the Congress would reduce money to the status of a mere commodity to be valued as such by private individuals in every transaction in which used, and would destroy entirely the value of money as money, the regulation of which is within the powers of the Congress. But Congress may by any appropriate measure prevent the use of money as a commodity and prevent any possessor thereof from realizing from its ownership a "commodity" value in excess of the "money" value assigned to it by the Congress. *Ling Su Fan* v. *United States, supra.*

Postponing for a moment consideration of the existing situation as affecting either the purpose of these contracts or the validity of the legislation, it is apparent that they were at their inception designed to withdraw from the control of Congress all obligations containing a gold clause in respect of matters clearly committed to Congress, whether or not our conception of its powers, as a whole, be right or wrong. History had taught that at recurring periods, either by reason of economic depression or of a disproportionate increase in the volume of those forms of money of lesser intrinsic value, gold coin had either been hoarded or taken flight or was obtainable only at a pre-

mium. It was to provide against this contingency—and this contingency alone—that these clauses were inserted.[2] So long as other forms of money continued to be universally received at a parity with the gold dollar of the old weight and fineness, these clauses were of no importance to the bondholder. At the time that these contracts were made, such coin was in circulation. At their inception, therefore, their purpose was to withdraw all contracts containing a gold clause from the power of Congress to make every dollar of equal value with every other dollar, and to preserve unimpaired the full legal tender qualities of all forms of money.

But it has been within the power of the Congress at all times to require the acceptance of every description of the currency as legal tender at its face value and of equal legal tender value with every other form of currency, and to take all measures necessary and appropriate for the achievement of these ends. This was settled in the *Legal Tender Cases*, *supra*, and in *Ling Su Fan* v. *United States*, *supra*. It was accomplished in the former case by the required acceptance of paper money at a legal tender value equal with gold. It was accomplished in the second case by prohibiting any private person having ownership of money from obtaining the benefit of a commodity value higher than its legal tender value either through melting down for purposes of sale as bullion or by its exportation. In that case, curiously enough, it was silver and not gold which was at a premium. The measures therein sustained were enacted for the purpose of preventing any citizen or resident of

[2]It is a matter of common knowledge that, historically, these clauses had their origin in the fear that Congress might at some time provide for the free coinage of silver and for the additional issue of paper money in amounts disproportionate to gold coins.

the Philippine Islands from obtaining the benefit of such premium either in domestic use or by exportation.

A premium on gold or any other form of coin arises primarily from excessive demand therefor, customarily resulting in hoarding, melting down as bullion, or exportation. These phenomena usually appear only in times of economic crises or by reason of dislocation in the currency system through the issue of disproportionate volumes of money of lesser intrinsic value. But whatever their cause, they are manifested in the first instance by an excessive demand for the particular kind of money in question, thus sending it to a premium. The multiplicity and extent of the gold clauses in this country have always been such as to create such a potential concerted demand for gold as to bring about the foregoing results. Hence they have always constituted a threat to the maintenance of parity. This was evident to the Congress at the time of the adoption of the Resolution. At that time there had been no basic change in our monetary system. Gold coin of the old weight and fineness was still a part of the currency, although permitted to circulate only in limited quantities. It was uncertain at the time of its adoption whether the President would exercise any of the powers conferred by the Thomas Amendment or not. Many hoped and believed that resort thereto might be averted. Exportation and hoarding of gold had been prohibited, but the excessive demand for gold created by the gold clause obligations still hung over the country and was a threat to the continued parity of all forms of money, irrespective of any subsequent possible basic change in the monetary system itself. At the time of its adoption, therefore, the Resolution was a necessary and appropriate measure to maintain the equal value of every dollar and to preserve a parity between all then existing

forms of currency. That it was valid as such is definitely supported by the *Legal Tender Cases* and *Ling Su Fan* v. *United States.*

But there is no constitutional requirement that the Congress should postpone the exercise of this or any other part of its money power until times of economic stress and crisis. On the very day after the plaintiff's bond or any other bond containing a gold clause was issued, a statute similar to the Resolution could have been enacted by the Congress and would have been within the exercise of the aforesaid and all the other powers hereinbefore reviewed. If thereafter, as those who inserted the clauses feared, increased volumes of silver or paper money had been issued, such an act would have retained its characteristics as a parity measure and the holders of bonds containing such clauses would have had no legal cause of complaint. The gold clause, therefore, has been at all times ineffective for the very purpose for which it was inserted, viz., to guard against an increase in the volume of other forms of money of less intrinsic value than gold, if at any time the Congress in the exercise of its power over the monetary system determined to provide such additional currency, and to protect its value by the enactment of parity and other statutes for such purpose.

And if later on the Congress had withdrawn gold coin itself, leaving the other forms of money theretofore declared to be equal therewith to circulate, the legal tender qualities of such money would not be less than before and would continue to be required for acceptance in the fulfilment of all obligations, past or present, whether containing a gold clause or not. Similarly, if thereafter the Congress had provided some new form of money, giving to it the same legal tender qualities as that theretofore de-

cleared to be equal to gold coin, such new form of money would automatically take its place in the currency system, have the same value, and be equally required for acceptance in the discharge of all such obligations. For the power to determine of what money shall consist, to give it the qualities of legal tender, to require its acceptance at its face value in the discharge of obligations, to regulate its value, to control its use as a standard of value, and to prohibit its use as a commodity, are all powers vested in the Federal Government, of which the right to enact and enforce a parity statute is but an exercise. All are but parts of the more fundamental power of the Congress to provide the people with a monetary system and a currency believed by it to be suitable to their needs and to those of their commerce and to insure to them the full and unimpaired benefits thereof.

The purpose of the foregoing is to show the relation between gold clause contracts and the power of the Congress, and to demonstrate, if further demonstration be required, that their purpose at their inception, judged in the light of the conditions under which made, was to withdraw obligations containing such clauses from the control of the Congress in the exercise of these indisputable powers. The extent to which such contracts have been made, representing as they do substantially all of the funded debt of practically all corporations engaged in interstate and foreign commerce and a large part of the public debt, and the consequent attempted nullification of effective control by the Congress over our monetary system and currency, is impressive. But were there but a single such contract, it would equally be an attempt by prophetic discernment to limit the Congressional field *pro tanto*, and as such, beyond the control of any individual.

3. If by prophetic discernment individuals may limit the monetary powers of Congress through the making of pre-existing contracts, they are equally possessed of the power to render nugatory the prohibition which the Resolution contains against the insertion of similar clauses in subsequent contracts and hence to withdraw entirely from the Congressional field all legal tender powers of Congress and its power to regulate the value of money.

The Resolution after its recitals begins by declaring the existence of gold clauses or any other form of contract requiring payment to be made in any particular kind of money or in "an amount of money measured thereby" against public policy. It strikes down all existing contracts containing such a clause and prohibits the making of others in the future. In none of the briefs which we have seen has the power of the Congress to prohibit the future insertion of such a clause in any contract been disputed. The reason is obvious. For if future contracts can be withdrawn from the Congressional field as to either their means or measure of payment (if the latter is measured in terms of some particular kind of money), then the exercise of the legal tender powers of Congress and of the power to regulate the value of money—confining our consideration for a moment to these two incidents of the money power as a whole—may be completely frustrated and rendered nugatory by private individuals. The legal tender qualities of money become a matter of contract instead of a matter of statute. The Government's power over the currency is thus limited to a determination of the weights, shapes, sizes and substances out of which money shall be made, to the stamping of coins and the engraving of paper, and the placing on both of certain denominations representing their

supposed face value. The acceptance of the same, or any part thereof, however, at such face value is dependent upon the sufferance of multitudes of people constituting the nation over whom, in its control of the currency, the Federal Government has hitherto been supposed to be supreme. Such a conception of the rights of the individual as related to the powers of the Congress would permit the former to deprive the latter not only of its legal tender powers and its power to regulate the value of money, but of the more fundamental powers to determine of what money shall consist, to give to it a legally defined value, and to establish a currency suited to the needs of the people and to make such basic changes therein from time to time as it chose.

But there is no valid distinction between the right of private individuals thus to withdraw from the Congress the exercise of its legal tender powers, of its power to regulate the value of money and of its power over the monetary system and the currency generally in respect of future private engagements than in respect of those previously made. This case does not turn, in its last analysis, upon an attempted interference by the Government with either pre-existing contracts or the right to contract for the future, but with the extent of the right of the private individual by contracts—whether previously made or subsequently entered into—to interfere with the powers of the Government over the monetary system and the currency.

The whole argument in opposition to the Resolution lies in the contention that it is within the right of a private individual to specify payment in a particular kind of money or in an amount of money measured thereby, and that, since no power to regulate private contracts as such has been extended to the Government, the Government may not interfere with the enforcement of such a contract. This

depends upon whether such contracts payable in lawful money of the United States may be brought within the reach of its money power. If not, then the prohibition, which the Resolution contains, against the making of a contract in *futuro*, is as much an interference with the right of private contract as is the prohibited enforcement of pre-existing contracts.

The Resolution was adopted on June 5, 1933, before there had been any basic change in our monetary system and when gold coin of the old weight and fineness was still a part of the currency, although largely but temporarily withdrawn from circulation. The Resolution forbade any person from thereafter making a contract payable in such coin or in an amount of money measured thereby. Unless such contracts thereafter made were within the field of the monetary powers of the Congress, it was without power to enact this prohibition. If such future contracts were within the Congressional field because contracts payable in money of the United States, then all similar contracts theretofore made were equally within that field. Hence, any attempt by prophetic discernment to limit such field or obstruct the powers of Congress therein is as much beyond the power of any private individual as his right subsequently to enter into such a contract made subsequent to the passage of the statute.

This, we think, follows not only on reason but upon the authority of the *Legal Tender Cases*, wherein it was said that there was

> "no well-founded distinction * * * between the constitutional validity of an act of Congress declaring treasury notes a legal tender for the payment of debts contracted after its passage and that of an act making them a legal tender for the discharge of

> all debts, as well as those incurred before as those made after its enactment."

As therein pointed out, there may be a difference in the effects produced or in the degree of resulting hardship, but none in respect of the question of power. And so the Court finally concluded:

> "Hence it is not strange that those who hold the legal tender acts unconstitutional when applied to contracts made before February, 1862, find themselves compelled also to hold that the acts are invalid as to debts created after that time, and to hold that both classes of debts alike can be discharged only by gold and silver coin."

Those who challenge the validity of the Resolution as applied to pre-existing contracts are thus logically driven to the same position, to wit, that it is invalid in its application to future contracts. This is so because the grounds of its supposed invalidity, as applied to pre-existing contracts, are equally applicable to its applicability to future contracts, while on the other hand, if the latter are within the legislative field, the former are likewise within it. The basis of the attack upon the validity of the Resolution as applied to pre-existing contracts is therefore such as to withdraw from the Congressional field all money contracts irrespective of their date. But, except as given away or paid in satisfaction of taxes, or for other unimportant exceptions, money is used only in the fulfilment of contractual obligations. It is for this use primarily that currency is provided, money given a legally defined value by the sovereign, and required to be accepted as such in the fulfilment of such obligations. The inevitable logic of those who challenge the

validity of the Resolution is thus to render vain and meaningless all of the powers of the Congress over the monetary system and the currency, hereinbefore reviewed.

4. Gold clause obligations, at all times a latent threat to the stability of the monetary system and currency, had, at the time of the adoption of the Resolution, become an obvious obstacle to the maintenance of a stable monetary system and currency, which it was within the power of the Congress to remove both to meet the then existing emergency and to prevent its recurrence.

It is the duty, as well as within the power of the Congress to provide the Nation with a stable monetary system and currency. Any instability therein is calculated to create and foster panics, dislocate and demoralize our whole economic and social fabric and impede, if not paralyze, both foreign and interstate commerce. A monetary system and a currency which lack the elements of stability are not such as are suited to the needs of the people and its commerce.

As we have pointed out, the nature and purpose of the gold clause was such as, at its inception, to constitute a latent threat to the maintenance of a stable monetary system and currency. At the time of the adoption of the Resolution, these clauses had become more than a latent threat to such stability. They were an obvious obstacle to the restoration and maintenance of a stable monetary system and currency, and hence to the processes of recovery. In the months preceding the opening of the 73rd Congress and during the first session thereof, all those phenomena which at various times in the history of all nations have resulted in an unsettlement of the monetary system and the

currency, and in sending gold to a premium, were present. So serious was this condition that at the opening of the Congress the President, by Presidential Proclamation, closed all the banks. Gold was going into hiding and taking flight abroad. Panic psychology had taken hold of numberless people everywhere. In the single month preceding the opening of the Congress there had been excessive withdrawals of gold for hoarding or exportation. By executive orders, taken under the authority of the Congress and subsequently confirmed by it, these tendencies had been arrested in part by prohibition against exportation and a limitation of the amount of gold coin which any one person might have in his possession.

The Congress was about to recess. The Congress had itself declined to make any change in our basic monetary system, but the Thomas Amendment had empowered the President so to do. Many believed that their exercise would be unnecessary. It was perfectly obvious, however, that there could be no restoration of normal monetary conditions, irrespective of the exercise or non-exercise of the powers conferred upon the President by the Thomas Amendment, so long as the stability of the monetary system was threatened by the hoarding or exportation of gold, or by any other condition which threatened such stability, through the creation of an excessive demand for gold coin, with its resulting tendency to drive it to a premium.

Upon the question of power it is immaterial whether there had been at the time in effect but a single gold clause obligation or a multitude thereof. Inserted, however, as they had been, as a matter of routine in all large money contracts, their existence was an obvious obstacle to the restoration and maintenance of a stable monetary system and currency, whether the powers conferred by the Thomas

Amendment were ever exercised or not.[3] It has been estimated that in principal amount they represented approximately one-half of the fixed indebtedness of the Nation, public and private. The annual interest charges thereon, aggregating approximately $4,750,000,000, were almost equal to the existing supply of gold then present in the country. The concerted potential demand for such excessive amounts of gold for the discharge of interest payments and to meet maturities constituted an obstacle to the restoration of stable conditions and to the arrestment of a tendency to send gold coin to a premium. It was an obstacle of precisely the same character as that to be found in the desire to export or hoard. Indeed, the obvious effect of such

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[3]It is, of course, clear, that gold clauses, however construed, had they remained enforceable, would have tended to create a disparity between the several types of money in the markets and in the payment of debts, in any financial stringency when the price of gold rose in terms of other commodities. This is true whether such clauses were intended to permit the obligee to demand payment in gold coin while it remained in circulation, or to permit the obligor, at his option, to discharge at any time by paying "gold value" in any other kind of money. If given the former construction, they tended to drive gold coin to a premium, thereby making for a disparity in the market, and to render all other forms of money of less value in the discharge of debts, since not receivable in discharge of the bulk of the large money transactions of the country. If given the latter construction, because of the universality of the practice of inserting such clauses in American money obligations, they had the effect not only of regulating the relative values of different kinds of money as between the parties thereto, but for the nation as a whole. Discharge of a gold clause obligation, so construed, by payment of as many dollars of any other kind of money as would, on the date of payment, buy the number of grains of gold in the gold coin specified in the obligation, would be an exact substitute for the alternative method of discharge, *i.e.*, payment of the specified number of dollars in gold coin. Hence, if it would take "Y" paper or silver dollars to buy the commodity content of a specified number of gold coin dollars (which we call "X"), at any time, it would also, because of the enormous number of such gold clauses, which were sufficient to control the operation of the money market, take "Y" paper or silver dollars to buy "X" gold coin dollars.

clauses in the hands of multitudes of people, was to whet the appetite to hoard itself and their existence constituted a continuing interference with the power of the Congress to maintain all forms of money at a parity.

As stated by the Congress in the preamble to the Resolution:

> "* * * the existing emergency has disclosed that provisions of obligations which purport to give the obligee the right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, * * * are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States in the markets and in the payment of debts * * *".

And as stated in the report of the House Committee on Banking and Currency, recommending favorable action on Public Resolution No. 10 (Report No. 179, 73d Congress, 1st Session):

> "1. The occasion for the declaration in the Resolution that the gold clauses are contrary to public policy arises out of the experience of the present emergency. *These gold clauses render ineffective the power of the Government to create a currency and determine the value thereof.* If the gold clause applied to a very limited number of contracts and security issues, it would be a matter of no particular consequence, but in this country virtually all obligations, almost as a matter of routine, contain the gold clause. In the light of this situation two phenomena which have developed during the present emergency make the enforcement of the gold clauses incompatible with the public interest. The first is

> the tendency which has developed internally to hoard gold; the second is the tendency for capital to leave the country. Under these circumstances no currency system, whether based on gold or upon any other foundation, can meet the requirements of the situation in which many billions of dollars of securities are expressed in a particular form of the circulating medium, particularly when it is the medium upon which the entire credit and currency structure rests."

In the light of the foregoing facts and of matters which are within the common knowledge of all, there can be no doubt as to the correctness of these findings. Considered in the light of the conditions existing at the time of its adoption, the Resolution is thus fully sustainable as the exercise of the power of the Congress to maintain all forms of money at an equal value in the discharge of obligations and in the markets and to take all measures necessary and appropriate for preventing any form of money from going to a premium both to meet the conditions then existing and to prevent their recurrence. The *Legal Tender Cases*, *supra*, and *Ling Su Fan* v. *United States*, *supra*.

The Resolution was also adopted in anticipation of a possible basic change in our monetary system under the powers conferred by the Thomas Amendment. In the event of such change, the gold clause obligations would have an equally unsettling effect upon the stability and usefulness of such monetary system as might be provided, and upon its relation to the restoration, preservation of normal and stable economic and social conditions, and to our domestic and foreign commerce. Whether the old system was to be preserved or a new system provided as a substitute therefor, these clauses if permitted to be given continuing effect, were an obvious obstacle to the maintenance of a stable monetary system and currency.

5. The Resolution was (1) an affirmative exercise of the power of the Congress to provide the Nation with a monetary system and currency believed by it to be suitable to the needs of the people and their commerce, and (2) of the power to remove an obvious obstruction or obstacle to the exercise of this power.

The fundamental power involved in this case is the power to provide the people with a monetary system and a currency believed by the Congress to be suitable to their needs and to the requirements of their commerce, both foreign and domestic, and to insure to them the full and unimpaired benefit thereof by all appropriate means. It is for the Congress to determine what that system shall be, and it is empowered to change it at will. All questions as to the wisdom and expediency of any measures adopted in the accomplishment of the aforesaid purposes are likewise for it.

Gold clause obligations were an obvious obstruction to the effective exercise by the Congress of its indisputable authority to make a basic change in our monetary and currency system through the devaluation of the gold dollar, and to insure to the people the full and unimpaired benefit of the new monetary system thereby created. Substantially all of the funded indebtedness of all industrial, railroad and utility corporations, upon whose successful operations and continued solvency both the domestic and foreign commerce of the country largely depends is evidenced by obligations containing gold clauses. The annual interest charges on all gold clause obligations, both public and private, estimated conservatively, aggregate approximately $4,750,000,000, to say nothing of recurring maturities of principal and the aggregate ultimately to be paid. Since the gold

content of the dollar has not only been reduced but gold coin withdrawn from circulation, payment therein is no longer possible. Instead, the contention is that the holders of such bonds should be paid substantially $1.70 in the existing currency for every $1.00 expressed in such obligation, whether for principal or interest. The result is, that while the new dollar is a dollar for every other purpose having full legal tender value as such, it has a value of but sixty cents in the discharge of such obligations. The issuers of such bonds must, therefore, collect their revenues in dollars having full legal tender value, but in the payment of their debts, treat such a dollar as worth but sixty cents for that purpose.

The question is not solely that of relieving the debt burden. The resulting dislocation and demoralization of the whole industrial structure is apparent. Consider, for example, the Baltimore and Ohio, the Respondent here. Under the Interstate Commerce Act that and every other railroad is limited in its charges to those prescribed or approved by the Interstate Commerce Commission. For the performance of its services it must accept the new dollar at its face value, but in the discharge of its payments, principal and interest, on its funded debt, the dollar so accepted is worth but sixty cents. The outstanding bonded indebtedness of the American railways alone was, on December 31, 1933 approximately $13,000,000,000.[4] If the Resolution was beyond the power of the Congress to enact, this figure is automatically raised by 70% to $22,000,000,000 in terms of existing money with a corresponding increase in the annual fixed charges, although, since the devaluation of the dollar, the general price level has increased less than 10

[4]47th Annual Report, Interstate Commerce Commission, p. 90 (Table III).

per cent.[5] As a matter of right, the railroads would theoretically be entitled to such increase in rates as might be necessary to absorb this additional debt burden, but the rates required for this purpose would, without doubt, cast a burden upon the commerce and industry of the country as a whole greater than it could bear.

The foregoing is but one of many practical illustrations of the extent to which the new monetary system, adopted by the Congress within the exercise of its indisputable powers, would be totally unsuited to the ordinary processes of commerce and industry and to the successful pursuit of interstate commerce by those engaged therein, unless accompanied by both the abrogation of pre-existing gold clause obligations and the prevention of the making of any such obligations in the future.

The commerce clause is one of those upon which the power of the Congress over the monetary system and currency rests, *Juilliard* v. *Greenman, supra.* In fact, it may be said without contradiction that the chief purpose for which currency is provided is to meet the requirements of commerce and industry, to which the monetary system and the currency must be suited and constitute an aid and not a hindrance. In regulating the monetary system, in the interests of the industry and commerce of the nation, Congress need not tie it inextricably to gold and render the monetary system subject to the fluctuations in the value of that commodity. Yet, if gold clauses remain enforceable, the Congressional powers are so circumscribed. This is clear because the billions upon billions of dollars of gold clauses were designed to protect the holder against any change in the monetary system which would have the effect,

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[5] "*Wholesale Prices*", Bulletins of Bureau of Labor Statistics, U. S. Dept. of Labor.

at the date of payment, of lessening the intrinsic value of the currency in relation to gold. The House Committee was right when it said that

> "These gold clauses render ineffective the power of the Government to create a currency and determine the value thereof."

The practical consequences of making the basic change in our monetary system believed to be appropriate and necessary for the protection of our foreign trade (see discussion, *post*) and for other purposes, through the devaluation of the dollar, without at the same time requiring the new dollar to be accepted, dollar for dollar, in the discharge of all obligations containing a gold clause, would have been such as to have afforded an effective deterrent to the exercise of the indisputable right of the Government so to do. Apparently fully conscious of this, petitioner in his brief (p. 9) naively suggests that

> "a decision in favor of the petitioner may *only* mean that the President by proclamation may have to revalue the gold unit back to its status under the Act of March 4, 1900. 31 Stat. 45, and where it was until January 31, 1934."

But the Congress may not be so fettered in the exercise of its power to make such basic changes in the monetary system as it believes appropriate to be made.

6. Gold clause obligations constituted an obstruction to the adjustment of the value of the dollar in the interest of our foreign commerce.

Among the findings made by the President in his Proclamation adjusting the gold content of the gold dollar were findings that

> "* * * the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold",

and that

> "to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15-5/21sts grains 9/10ths fine."

Indeed, there can be no doubt that the primary object of the reduction of the gold content of the gold dollar was to protect American foreign commerce.[6] As previously pointed out, the depreciation of foreign currencies in terms of gold had resulted in placing our currency at a premium over the currencies of foreign countries, and hence, in making it more difficult for citizens of such countries to buy American goods.

That it was legitimate for Congress to authorize an adjustment in the gold content of the gold dollar for the purpose of aiding American foreign commerce is indisputable. Congress not only has the power, but is under a

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[6]If inflation for domestic purposes had been the primary object, there were easier methods available and provided for in the Thomas amendment, to wit, the issuance of additional paper currency and the free coinage of silver. Reduction of the gold content of the gold dollar had for its primary object the removal of the high gold peg which had adversely affected our international trade. That such reduction was not primarily intended to be an inflationary measure is indicated by the fact that Congress had before it the experience of the United Kingdom wherein prices did not rise after that country went off the gold standard. In any event, the fact is that prices in this country, although rising since the reduction of the gold content of the dollar in January 1934, have not risen in inverse ratio to the extent of such reduction.

duty to establish a monetary system which permits our citizens to trade on favorable terms with citizens of foreign countries.

Gold clauses, if enforceable, would have precluded the attainment of such object, for to have adjusted the gold content of the gold dollar in the interest of our foreign commerce without rendering such clauses unenforceable would have been enormously to increase the already crushing domestic debt burden and risk a breakdown of our internal economy. We wish most emphatically to point out that Congress was not faced with this alternative because of any natural phenomenon but because of the artificial situation resulting from the insertion, as a matter of routine, in all large money obligations, of gold clauses, which really constituted nothing more nor less than attempts by private individuals to encroach upon the field delegated to Congress by the Constitution. There would seem to be no doubt but that Congress had the power to render nugatory such attempted encroachment upon the field delegated to it at any time, but it was particularly appropriate that it should do so at a time when the effect thereof was to circumscribe the exercise of powers conferred upon it by the Constitution for the attainment of legitimate objects.

7. In the last analysis, those who challenge the validity of the Resolution would deny to the Congress the choice of means by which to effect such change in the monetary system as was believed by it to be required by the needs of the people and their commerce, both foreign and domestic.

The Thomas Amendment empowered the President to increase the volume of the currency either (1) by the issue of additional paper money, (2) by the free coinage of

silver, or (3) by both, as well as to reduce the gold content of the dollar. The effect of the adoption of either (1) or (2), or both, unaccompanied by any reduction in the gold content of the dollar, might well have been to send gold coin of the then existing weight and fineness to a premium. It is, however, obvious that if a basic change in our monetary system had been accomplished by any one of these methods, the Resolution would have been within the powers of the Congress as a parity act and as one designed to maintain uniform legal tender values in all forms of currency and to preserve the stability of the national monetary system. The effect upon holders of gold clause obligations would have been quite as distasteful to them and in all probability more severe than that resulting from the devaluation of the dollar.

If the foregoing conclusions are sound, those who challenge the Resolution are thus forced to the position that while it would have been valid if either of the other powers conferred by the Thomas Amendment had been exercised, it is invalid because the basic change made in our monetary system under the powers conferred upon the President thereby took the form of a devaluation of the dollar. This is the same thing as saying that private individuals by pre-existing contract may limit the choice of means by which the Congress may effect a basic change in the monetary system. To state this proposition is to answer it. As said in *McCulloch* v. *Maryland, supra,* at pp. :

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

8. As related to the subsequent devaluation of the dollar, the Resolution was a valid exercise of all of the powers of the Congress over the monetary system and the currency, hereinbefore reviewed.

Considered in its relation to the subsequent devaluation of the dollar, therefore, the Resolution was within the powers of the Congress as the affirmative exercise of its power to regulate the value of money and fix its legal tender value for all purposes and as a means not merely appropriate but necessary to remove an obvious obstacle (1) to the free choice by the Congress of the means by which a reform or change in our monetary system should be brought about, and (2) to the adoption of such monetary system and currency as it believed to be suitable for the requirements of commerce and the people, and to insure to them the full and unimpaired benefit thereof. The power to provide a currency and to declare of what it shall consist and what its value shall be necessarily includes the power to revalue the unit of value from time to time either upwards or downwards. As previously pointed out, it has always been a prerogative of the sovereign to debase as well as to enhance the coinage. This power has existed from time immemorial. As a necessary concomitant thereof, the sovereign may require the acceptance of the new and debased coinage at the same legal tender value as that which it supersedes, irrespective of the existence of private contracts requiring payment in the old and more valuable coin. This was decided in the case of *Mixed Money, supra,* in which other precedents for the exercise of this power were collected.

Since the World War practically every important trading nation has gone off the gold standard or devalued its

unit of exchange. Nations other than the United States have passed appropriate measures for the abrogation of gold clauses similar in effect to the Resolution.[7] While the United States has a written Constitution, its sovereign powers within the legislative field delegated to it are equal to those of any other sovereign except as restrained by some express prohibition to be found in the Constitution itself. We shall hereafter discuss the effect of the due process clause upon this Resolution. Laying that question aside, however, the Resolution, when considered in relation to the subsequent basic change in the monetary system brought about by the devaluation of the dollar, was the exercise of a power of sovereignty repeatedly exercised by sovereigns in the past and more recently exercised by many sovereigns outside of the United States as a part of their monetary or recovery legislation, enacted to meet the conditions growing out of the War. This nation is possessed of equal power.

The Resolution, from whatever standpoint considered, is thus an exercise of the affirmative power of Congress over the monetary system and currency of the Nation, and was also an appropriate means for the removal of an obvious obstruction to the exercise of those powers, and to the performance of the duty, as well as to the exercise of the power of the Congress to provide the people with such monetary system as in its judgment was best suited to its needs, and to insure to them its full and unimpaired benefit.

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[7]Nussbaum, *Comparative and International Aspects of American Gold Clause Abrogation*, 44 Yale Law Journal, 53.

VI

THE RESOLUTION AS HERE APPLIED DOES NOT VIOLATE ANY RIGHT, TITLE, PRIVILEGE OR IMMUNITY SAFEGUARDED TO THE PETITIONER BY THE FEDERAL CONSTITUTION.

1. The Contract Impairment Clause, the Equal Protection Clause, and the Just Compensation Clause, have no bearing whatever on the case at bar.

The petitioner contends that the Resolution impairs the obligation of the bond contract, constitutes a taking of his property without just compensation, and denies him the equal protection of the laws. It is settled, however, that the provision in Article 10 of the Constitution prohibiting the impairment of the obligation of contracts is a prohibition against State action only (*Sinking Fund Cases*, 99 U. S. 700, 718; *New York* v. *United States*, 217 U. S. 591, 601), and the only equal protection clause in the Constitution is that found in the Fourteenth Amendment which, it is settled, also applies only to such action. Petitioner is therefore relying solely upon the Fifth Amendment which, so far as pertinent to the contentions raised by him, is as follows:

> "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

The petitioner's contention that the Resolution constitutes a taking of his property without just compensation (Brief, p. 55) is clearly an inadvertence. The final clause of the Fifth Amendment, quoted above, relates to the

taking of property *by the United States for public use.* Moreover, the Resolution, as applied to nullify gold clauses in private contracts, did not result in the "taking" of property by anyone, in the constitutional sense, but merely "frustrates", *pro tanto,* a purpose expressed in a private obligation wholly between private persons, found to be incompatible with the fulfilment of the legitimate needs and aims of the National Government.[1]

Petitioner's only possible constitutional claim, therefore, is one based upon the penultimate clause of the Fifth Amendment, and comes to this,—that he has been deprived of his liberty of contract, or of his property in the bond contract, without due process of law.

2. The Resolution, being a means appropriate to the exercise of a power conferred upon the Congress, and uniform in its application, is not an arbitrary, capricious or discriminatory interference with private rights of contract or property, and its application here, therefore, does not violate the due process clause of the Fifth Amendment.

We freely admit that Public Resolution No. 10, as here applied, restricts the use of private property and the right of private contract. That is not enough, without more, to bring the Resolution into conflict with the Fifth Amendment. Under principles long settled and not challenged by petitioner, it is clear that if the Resolution, as here applied, had for its end the accomplishment of a purpose within

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[1]*Omnia Commercial Co.* v. *United States,* 261 U. S. 502, 508-510; *Ruppert* v. *Caffey,* 251 U. S. 265, 303 (1920); *Union Bridge Co.* v. *United States,* 204 U. S. 364, 399-401 (1907); *Louisville Bridge Co.* v. *United States,* 242 U. S. 409, 421-423 (1917); *Reichelderfer* v. *Quinn,* 287 U. S. 315, 319. See, *The Legal Tender Cases,* 12 Wall. 457, 551.

the lawful constitutional power of the United States; was a means reasonably adapted to the exercise of that power; and was a *bona fide* non-discriminatory measure, then it has not deprived the petitioner of any right, title, privilege or immunity safeguarded to him by the Fifth Amendment to the Constitution.[2]

The preceding discussion in this brief has demonstrated that the Resolution was enacted in the legitimate exercise of functions expressly entrusted to the Federal Government by the Constitution and that the petitioner's rights, such as they were, were subject from their inception to the possible future exercise of lawful governmental authority. It has also been shown to be the established doctrine of this Court that in the exercise of such functions the United States may "consistently with the Fifth Amendment" impose restrictions upon private property "for a permitted purpose" which result in serious depreciation of its value (*Calhoun* v. *Massie*, 253 U. S. 170, 175), and that it may "for legitimate governmental purposes" (*Sinking Fund Cases*, 99 U. S. 700, 718) "destroy the worth of contracts" (*Legal Tender Cases*, 12 Wall 457, 484), since pre-existing private contracts do not limit "the sovereign right of the government" (*Calhoun* v. *Massie*, *supra*; *Omnia Co.* v. *United States*, *supra*, p. 509; *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467, 484; *Union Dry Goods Co.* v. *Georgia Public Service Corporation*, 248 U. S. 372, 375-377), nor fetter its action within the field of the powers entrusted to it by the Constitution (*Philadelphia, Baltimore & Washington R. R.* v. *Schubert*, 224 U. S. 603; *Sproles* v. *Binford*, 286 U. S. 364, 390-391).

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[2]*The Legal Tender Cases*, 12 Wall. 457, 551; *Ling Su Fan* v. *United States*, 218 U. S. 302, 311; *Nebbia* v. *New York*, 291 U. S. 502, 525; *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44; *Graham* v. *Goodcell*, 282 U. S. 409, 431.

That the Resolution, as applied to private gold clause contracts, was a reasonable means having a substantial relation to the object sought to be attained by the Congress in pursuance of its policy with respect to the monetary system and the currency has, we believe, had ample demonstration in these pages, and admits of no doubt. The guaranty of due process in the Fifth Amendment, as this Court has repeatedly pointed out, demands no more than that the means selected by the Congress for the attainment of ends within its power shall have a real and substantial relation to the attainment of such ends (*McCullough* v. *Maryland*, 4 Wheat. 315, 419-421; *Ling Su Fan* v. *United States*, *supra*, 311; *Nebbia* v. *New York*, *supra*, 525).

That the Resolution was also a *bona fide* exertion of the constitutional power of the Congress and not a mere arbitrary interference with private rights of liberty or of contract under the cloak of an exercise of the power over the monetary system and the currency, has been made clear by the preceding discussion, which has established not merely the propriety, but the necessity, of this measure to the fulfilment of the legitimate governmental policy. This being so, the "collateral purposes or motives" of the Congress, if any, "are matters beyond the scope of judicial inquiry." (*Magnano Co.* v. *Hamilton*, *supra*; *McCray* v. *United States*, 195 U. S. 27, 56-59).

The suggestion that the Resolution is a part of currency measures adopted by the Seventy-third Congress with the purpose of transferring wealth from one class to another, and is therefore violative of the due process clause of the Fifth Amendment because constituting discriminatory class legislation, is answered by what is said above. The Resolution is for the accomplishment of a purpose within the express powers of the Congress; it is an appropriate

means having a real and substantial relation to the accomplishment of that purpose; it does not single out isolated persons or transactions for special treatment but deals with a customary and widespread practice, operating with equal effect upon the large number of persons in this country affected by it. There is no ground for a serious contention that the Resolution is so arbitrary and capricious in its classification as to offend the Fifth Amendment. *Graham* v. *Goodcell, supra,* 431.

Respectfully submitted,

FREDERICK H. WOOD,
Counsel for Respondent.

CARL A. DE GERSDORFF,
Of Counsel.